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28821

EXTRACTS FROM TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 259.

THE REPUBLIC OF COLOMBIA, APPELLANT,

vs.

THE CAUCA COMPANY AND THE COLOMBIAN CONSTRUCTION AND IMPROVEMENT COMPANY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

RECORD FILED FEBRUARY 28, 1902.

(18,428.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 22, 1902.

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a UNITED STATES OF AMERICA, *ss:*

At a United States circuit court of appeals for the fourth circuit, begun and held at the court-house in the city of Richmond on the first Tuesday in February, being the fourth day of the same month, in the year of our Lord one thousand nine hundred and two.

Present: Hon. Nathan Goff, circuit judge, Hon. Charles H. Simonton, circuit judge, Hon. William H. Brawley, district judge.

Among others were the following proceedings, to wit:

THE REPUBLIC OF COLOMBIA, Appellant,
vs.
THE CAUCA COMPANY and COLOMBIAN CONSTRUCTION & Improvement Company, Appellees. } No. 407.

Appeal from the circuit court of the United States for the district of West Virginia.

Be it remembered that heretofore, to wit: on the 26th day of March, 1901, transcript of the record of the said circuit court in the said entitled cause was transmitted to and filed in our said circuit court of appeals here, which is as follows, to wit:

1 TRANSCRIPT OF RECORD.

In the Circuit Court of the United States for the District of West Virginia.

THE REPUBLIC OF COLOMBIA, Complainant,
vs.
THE "CAUCA COMPANY" and THE "COLOMBIAN CONSTRUCTION and Improvement Company."

Original Bill of Complaint, with Exhibits.

Before the Honorable Nathan Goff.

Calderon Carlisle, William G. Johnson, solicitors for complainant; Edwin Maxwell, of counsel.

Bill.

Filed December 15, 1897.

In the Circuit Court of the United States for the District of West Virginia.

THE REPUBLIC OF COLOMBIA, Complainant,
vs.
THE "CAUCA COMPANY" and "THE COLOMBIAN CONSTRUCTION and Improvement Company," Defendants.

To the Honorable Nathan Goff, circuit judge:

The Republic of Colombia, a body corporate and politic under the law of nations, and a foreign State within the meaning of the Con-

stitution of the United States, brings this its bill against the "Cauca Company," and "the Colombian Construction and Improvement Company," two certain commercial corporations created and existing under the laws of one of the United States of America, to wit: the State of West Virginia, as apperrs by their certificates of incorporation hereinafter mentioned.

And your orator shows that this complainant is a foreign
2 State at peace with the United States and holding diplomatic relations therewith, and that its accredited diplomatic representative duly recognized and received as such by the United States, is General Julio Rengifo, chargé d'affair-s *ad interim*, as will more fully appear by the certificate of the Department of State of the United States which it is prayed may be taken and read as part of this bill, and which is filed herewith, a printed copy thereof being hereunto annexed and marked Complainant's Exhibit No. 1. And the said General Rengifo is, as the national representative of the complainant in the United States, and as its agent *ad hoc*, fully authorized and empowered by the Republic of Colombia, to sign this bill in its name and to make oath thereto on its behalf.

That the defendants, The "Cauca Company," and "The Colombian Construction and Improvement Company" have no office or place of business within the State of West Virginia, and under the laws of said State and by their articles of incorporation they are not required to have such within the said State, but they are required by the laws of the State of West Virginia to appoint and maintain within the said State a certain attorney upon whom service of all process shall be made, and in compliance with said laws said corporations have duly appointed John B. Floyd of the city of Charleston, in the State of West Virginia, upon whom the process of this court can be served, as will more fully appear by the certified copies of said appointments filed herewith, printed copies thereof being hereunto annexed and marked Complainant's Exhibit Nos. 2 and 3.

And thereupon your orator complaining shows:

1. That on or about the 27th day of August, 1890, the Republic of Colombia was the owner of a certain railroad within the limits of said Republic running eastwardly from Buenaventura towards the city of Manizales about twenty-nine kilometers and seven hundred and fifty meters in length, twenty-seven kilometers and one hundred meters of which was completed road and about two kilometers and six hundred and fifty meters of partly completed road, and that a portion of the completed road, twenty kilometers and two hundred and forty meters in length, was being operated by this complainant.

2. That on the said 27th day of August, 1890, one James L. Cherry, a citizen of the United States, entered into a certain written contract with your complainant, The Republic of Colombia, through its authorized agents and officers, which it is prayed may be taken and read as a part of this bill, a copy of which is hereunto annexed,
3 marked Complainant's Exhibit No. 4. That by the national constitution of this complainant, which is the supreme law of the land, absolutely binding all its citizens and all the departments of the government, it is expressly provided that the Congress

shall have power to approve or disapprove any such contract. That the said contract was thereafter fully ratified and approved with certain modifications by an act of the Congress of the Republic of Colombia, dated October 16, 1890, in accordance with the provisions of the constitution aforesaid and of the said contract, and English translation of which act of Congress is appended to said contract and included in Complainant's Exhibit No. 4. The said contract, as thus modified and approved by the Congress, was accepted by the said James L. Cherry.

3. That by said contract the said Cherry undertook to complete the line of the railroad aforesaid from the city of Buenaventura, on the Pacific coast to the city of Manizales by way of Cali, a distance of about three hundred miles, the whole of said route being within the territory of the Republic of Colombia. That by said contract the said Cherry undertook to begin the work of construction within four months from the said 27th day of August, 1890, and to complete and open to traffic the railroad aforesaid from Buenaventura on the Pacific coast to the city of Cali, a distance of about one hundred and sixty kilometers, within the peremptory period of four years from said 27th day of August, 1890.

4. That in consideration of the faithful performance of his contract by the said Cherry, the complainant granted to him the exclusive privilege of constructing and operating the said railroad, and also the exclusive privilege of constructing and operating certain other important and valuable roads, and in addition thereto gave large and liberal grants of lands and mines and other valuable rights and privileges, all of which will more particularly appear by reference to said contract, Complainant's Exhibit No. 4.

5. That within the said period of four months, within which the said Cherry had bound himself to begin work, and on or about the 29th day of November, 1890, the defendant, The "Cauca Company," was incorporated under the laws of the State of West Virginia, as will more fully appear by its certificate of incorporation, which it is prayed may be taken and read as a part of this bill, and a copy of which is hereunto annexed and marked Complainant's Exhibit No. 5.

4 6. That on the same day, to wit: the 29th day of November, 1890, the defendant, "The Colombian Construction and Improvement Company," was incorporated under the laws of the State of West Virginia, as will more fully appear by its certificate of incorporation, which it is prayed may be taken and read as a part of this bill, and a copy of which is hereunto annexed and marked Complainant's Exhibit No. 6.

7. That on the same 29th day of November, 1890, the defendant, The Cauca Company, entered into a certain written contract with the said James L. Cherry, which it is prayed may be taken and read as a part of this bill, and a copy of which is hereunto annexed, marked Complainant's Exhibit No. 7; and on the same 29th day of November, 1890, the defendant, The Colombian Construction and Improvement Company, entered in- a certain written contract with the said James L. Cherry which it is prayed may be taken and read

as a part of this bill, and a copy of which is hereunto annexed and marked Complainant's Exhibit No. 8.

8. And your orator further shows that the said contract of the defendant, The Cauca Company, with the said Cherry and the said contract by the defendant, The Colombian Construction and Improvement Company, with said Cherry, if not utterly null and void, were, together with the organication of said defendant corporations, part and parcel of a scheme to cheat and defraud the complainant and to escape the just obligations of the contract between the complainant and the said Cherry, and to evade the faithful performance thereof, and at the same time to secure to the said Cherry and his associates the beneficial provisions of said contract between the complainant and the said Cherry.

9. Your orator further shows that even if the said Cherry, or the defendant, The "Cauca Company," or the defendant, "The Colombian Construction and Improvement Company," did, in good faith, within four months from the said 27th day of August, 1890, commence the actual construction of the said railroad, nevertheless neither the said Cherry, nor either of said defendants, nor any other person or corporation, within the period of four years from the said 27th day of August, 1890, did complete the first section of said road from Buenaventura to Cali as provided in said contract, nor did the said defendants nor the said Cherry nor any other person or corporation construct any part of the works agreed to be constructed in conformity with the stipulations and provisions of said contract.

But, on the contrary, your orator avers the truth to be that all the work and labor ever done by any person or corporation whomsoever on the said road from the date of the contract with the said Cherry, and up to the 16th of November, 1894, more than four years after the date of Cherry's said contract, was less than ten kilometers, and the work which was done was imperfectly done and not in strict or substantial compliance with the requirements of the said contract, as appears by the affidavit of Francisco J. Cisneros, herewith filed, which it is prayed may be taken and read as a part of this bill, a printed copy thereof being hereto annexed, marked Complainant's Exhibit No. 9. And your orator is informed and believes and therefore charges that no part of said work was done by the defendant, The Cauca Company.

10. That failure to build the road within the time and in the manner prescribed, and various other matters, were, each of them, by the terms of the contract with Cherry, made cause of forfeiture to The Republic of Colombia, the complainant herein, and by said contract it was expressly provided that in case of forfeiture of the concession for any of the causes thereinbefore set forth the work that had been done should become the property of the nation, as well as also such sums as at the date of the declaration of the forfeiture might have been deposited as security by the concessionary.

11. That on the 16th of November, 1894, more than four years after the date of the contract with or concession to the said Cherry, the said contract not having been performed and the forfeiture in the said contract provided having been duly incurred, the Congress

of Colombia in a law entitled "Law sixty, 16th of November, 1894," directed the government to proceed to decree the forfeiture, and in the same law a pretended extension of the time for the completion of the road to Cali procured in December, 1892, from executive officers without authority and which had never been in anywise authorized, ratified or approved by the Congress, was expressly repudiated, and it is prayed the said law may be taken and read as part hereof, and an English translation thereof is hereunto annexed marked Complainant's Exhibit No. 10. Thereafter, on the 16th of October, 1895, by resolution No. 9 of that date the said forfeiture was declared in pursuance of said legislative authority.

12. That no proceeding in pursuance of the said forfeiture of the concession enforcing its provision that all work that had been done should become the property of the nation having been finally completed, and no application to refer the question of the right of forfeiture to arbitration, as provided in article thirty-seven of said contract with said Cherry, having been made, this complainant, yielding to the solicitations of the said Cherry as the agent and attorney of the defendant, The "Cauca Company," and in deference to the friendly intervention in its behalf of the minister of the United States at Bogota, but not in pursuance of any negotiations with the United States of America, and without entering into any compact, agreement or stipulation with the said United States or their representative, voluntarily decided not to avail itself of its right under the contract to assume, without any compensation, the ownership of the work that had been done, and thereupon the Congress of the complainant passed the act entitled Law 41 of 1896, authorizing the executive to make a friendly settlement of the controversy growing out of the forfeiture aforesaid, but making it an express condition of any friendly settlement that all claims under the concession of August 27th, 1890, must be absolutely abandoned, and the road with all its fixed and rolling stock, etc., must be immediately delivered to the government of this complainant. And it is prayed that said law may be taken and read as part of this bill, the original Spanish text as officially published in Colombia being herewith filed as part of Exhibit No. 22, and a printed copy thereof, together with an English translation, being also filed herewith and marked Complainant's Exhibit No. 11. And under authority of said law this complainant entered into a certain private agreement with the defendant, The Cauca Company alone, a corporation, claiming as assignee of the original concessionary, James L. Cherry, whereby on the one hand the said company agreed to peaceably surrender without contest its possession and control of the road and works and all rights under the concession, and your complainant, The Republic of Colombia, on its part agreed that for all work and labor actually done by the defendant, The Cauca Company, in the construction of so much of said road as had been constructed by it, to pay what the said work had actually cost, and for that purpose agreed to refer the ascertainment of that cost to arbitration. That the said agreement is hereby made part hereof and prayed to be taken and read as a part of this bill, and a duly certified copy thereof in the Spanish

text is fied herewith. A printed copy thereof, with a printed English translation, are hereunto annexed marked Complainant's Exhibit No. 12.

7 13. And this complainant further shows that although, as already stated, the convention for the settlement by arbitration of the difference between the complainant and the defendant, The "Cauca Company," claiming to be the assignee of its concessionary, was a private agreement, and although one of the arbitrators was to be named by the secretary of the treasury of this complainant, and another by the attorney-in-fact of the Cauca Company, it was deemed wise and prudent, in view of the fact that said company was an American corporation, as an evidence of fairness and good faith, to provide that the third commissioner should be agreed upon by the Secretary of State of the United States of America and the minister of Colombia at Washington.

14. That in and by such agreement it was provided in article 6, that should any of the members of the commission decline to act or resign from the commission or for any reason cease to act, the proceedings of the commissions should not thereby be invalidated, but the commission should be *restored* by a new appointment which was to be made, by the party who appointed the member who failed to act, within thirty days, counting from the date on which said failure to act should occur. If such party should not comply with such obligation, the Secretary of State of the United States of America and the minister of Colombia at Washington should proceed by agreement to appoint a person to fill the vacancy.

15. That the members of the said commission were duly appointed, as appears by the certificates of their appointments, which it is prayed may be taken and read as part hereof, and copies of which are hereunto annexed, marked Complainant's Exhibits 13, 14, and 15, and said commission met, as provided in said agreement, in the city of New York, and held its first session on the third day of April, 1897, and thereafter held thirty-three other sessions, and at the thirty-fifth session, held on the 22nd day of October, 1897, the commission was notified by Manuel H. Pena, the commissioner named by the minister of the treasury of complainant, that he had resigned to the said minister of the treasury who had appointed him, the office of commissioner, and he transmitted to the other commissioners, through its secretary, a copy of his letter of resignation addressed to the said minister. That the said resignation was the independent act of the said commissioner—not done by the order of, or with the knowledge of the complainant, The Republic of Colombia, which only had knowledge of it after the resigna-

8 tion, which was to take effect from its date, was actually transmitted to the minister of the treasury of this complainant.

15. That thereafter neither this complainant, nor any member of its government, nor its representative in the United States, nor its agent specially appointed before the commission, was requested by the defendant, The Cauca Company, or either member of the commission or any other person whomsoever to take any steps to restore the commission by filling the vacancy created by the resignation of

the said Pena, as provided in the terms of the convention of January 4, 1897, nor has it ever been requested so to do.

17. And your orator further shows that notwithstanding the voluntary retirement and resignation from said commission, of said Pena, the member appointed by this complainant as aforesaid, the remaining members of said commission, without any notice to this complainant, or any one representing it, and without its knowledge, and without request or opportunity for restoring the commission by the appointment of a third member as the representative of this complainant, but immediately, and on the same day that said Peno resigned, assembled together and assumed to continue the functions of said commission in the absence of the said Pena, or of any one representing this complainant, but acting in that behalf wholly under the advice of Marcus Stine, Esquire, an incorporator and stockholder of the defendant corporation, "The Colombian Construction and Improvement Company," and the counsel for the defendant, The Cauca Company, in the proceedings before said commission, undertook to consider and decide matters not theretofore acted upon by the full commission, but which had been postponed from a previous meeting for further consideration, and finally formulated a pretended decision or award, which it is prayed may be taken and read as part hereof, one of the originals of said pretended award, together with the letter transmitting the same to the diplomatic representative of complainant at Washington, is filed herewith, and a printed copy thereof is hereunto annexed marked Complainant's Exhibit No. 16.

18. Your orator further shows that it is advised and believes and therefore charges that the said commission, after the retirement and resignation of the said Pena, was wholly incompetent in law to proceed further with the consideration of the matter submitted to it, or to make any decision or award in the premises, or to do any other matter or thing until the said commission had been restored in accordance with article six of the agreement under which
9 the said commission existed, that is to say, by the appointment by this complainant of another person in the place and stead of said Pena, or by the joint agreement of the said Rengifo and the Secretary of State of the United States of America in the event of the failure of this complainant to appoint such successor, and your orator further says that it is advised and believes and therefore charges that no successor having been appointed by this complainant or any one with its authority, and no request having been made for such appointment, and no opportunity having been given this complainant to make such appointment and the complainant having no knowledge or notice of the attempt of the remaining members of said commission further to proceed in the matter, and not having assented thereto or acquiesced therein, the said pretended decision or award is a nullity, and the action of the said remaining members of the said commission in formulating and making the same was and is *ultra vires* and void.

19. Your orator further shows that two of the said commission, that is to say, Christian F. Schramme, the representative of the de-

fendant, The Cauca Company, and Lewis M. Haupt, the member appointed by the Secretary of State of the United States of America and the diplomatic representative in the United States of this complainant, in disregard of their duty of fairness and impartiality, misconducted themselves in the last two sessions so held by them as aforesaid by taking in and admitting as a party to their deliberations the said Marcus Stine, and under and by his direction causing to be destroyed the minutes of their proceedings, and in having formulated and delivered to the secretary of said commission as the true minutes of the said proceedings certain untrue, fabricated and pretended minutes of such proceedings prepared by or under the direction of the said Stine, the counsel of the defendant, The Cauca Company, for the purpose of incorrectly and untruly representing the proceedings of said two members of said commission.

20. Your orator further shows that the said Haupt, in violation of his duty, impartially and fairly to consider and decide, as required by the agreement creating the said commission, the matters in controversy submitted to it by the parties thereto, before the various matters in behalf of the parties in interest had been completely presented, and without considering or examining the views presented for his examination and consideration by this complainant, but wholly disregarding the same did, on the 12th day of October, 1897, promulgate a certain projected scheme of decision or award, and submitted the same to the said commission as a basis for final action. And the said Haupt in further disregard of his duty to this complainant, as a member of said commission, subsequently attempted to suppress from the minutes of such proceedings a part of said projected decision or award after the same had been discussed and considered by the whole commission, and directed the secretary of said commission to expunge from the records of its proceedings the said part of said projected decision or award for the purpose and with the object of misrepresenting the true course of procedure of the said commission and particularly of the conduct of said Haupt and the said Christian F. Schramme.

21. Your orator is further advised and believes, and therefore charges that such course on the part of the said Haupt amounted to misconduct as an arbitrator, was in violation of his duty in the premises and was so far partial, unjust and improper as to disqualify him as an arbitrator and to render any award or decision by him, not acquiesced in by this complainant or its representative in the commission, invalid.

22. Your orator further shows that the said Haupt and the said Schramme further misconducted themselves as arbitrators under the agreement between this complainant and the defendant, The Cauca Company, in that they received and considered, against the objection of this complainant duly made by its representatives and agents before said commission, wholly incompetent evidence in this that they received the oral testimony of the said Schramme, one of the arbitrators, as to certain pretended conversations, agreements and understandings between him and certain executive officers of this complainant prior to the making of the agreement under which the

said arbitrators were acting, and other wholly incompe-nt evidence as to the true intent and meaning of the said articles of agreement under which said arbitration was sitting; and the said Haupt and Schramme, acting upon such illegal and incompetent evidence, undertook to decide, and did decide, against the true intent and meaning of the said written agreement and in support of the alleged conversations, agreements and understandings between the said Schramme and certain executive officers of this complainant, and of the other incompetent evidence as to the true intent and meaning of the provisions of said articles of agreement in regard to the matters submitted to said commission for their decision. And your orator is advised and believes, and therefore charges that in thus acting, the said arbitrators disregarded
11 their duty in the premises and the rights of this complainant, and that by such misconduct on their part the said two arbitrators became and were disqualified to act as arbitrators, and any decision or award agreed upon by them in pursuance of such misconduct and not acquiesced in or consented to by this complainant or its representatives, was invalid and that the said award or decision by the said Haupt and Schramme is for that reason also invalid and void.

23. Your orator further shows that by the true intent and meaning of the said agreement between this complainant and the defendant, The Cauca Company, executed on the 4th of January, 1897, the said commission was given no other right, power or authority than to ascertain what the defendant, The Cauca Company, should prove it had actually expended in the construction of so much of the said railroad, provided to be constructed in the said contract with the said Cherry, as had in fact been constructed by it, and for rolling stock, tools and the like, imported for use on said railroad.

24. Your orator further shows that the said defendant, The Cauca Company, did not prove that it had expended any sum whatever for said purposes, and did not, and does not now, pretend that it did expend any sum whatsoever therefor; but on the contrary, it admitted that the claims urged before the said commission of arbitrators were based wholly and exclusively upon alleged expenditures of money and liabilities incurred by the defendant, The Colombian Construction and Improvement Company. And your orator further shows that the defendant, The Cauca Company, in order to meet this situation before the said commission, presented to said commission a certain instrument purporting to be a release from the defendant, The Colombian Construction and Improvement Company, to this complainant, which it is prayed may be taken and read as a part of this bill, and a copy of which is herewith filed marked Complainant's Exhibit No. 17. Your orator is further advised and believes and, therefore, charges that the said instrument cannot have the effect of supplying proof by the said defendant, The Cauca Company, in the premises; that the said instrument is not an assignment of the rights, if any, of the said Colombian Construction and Improvement Company to the said defendant, The Cauca Company, nor, if it were, could it give to the said defendant The Cauca Company any rights

against this complainant nor justify any award or decision *it* by the said commission of arbitrators. This complainant does
12 not know whether the said defendant, The Columbian Construction and Improvement Company, pretends to any claim against this complainant by reason of the premises, nor whether or not it claims any right or interest in the said pretended award of the said Haupt and Schramme hereinbefore referred to, but it is advised and believes and therefore charges that the said defendant, The Columbian Construction and Improvement Company should be required to discover in this cause what, if any, interests or rights it pretends to have in the premises.

25. Your orator further shows that it is advised and believes and therefore charges that as the said defendant, The Cauca Company, did not prove that it had expended any sums of money whatsoever or that it had any pecuniary interest in the subject-matter of the agreement of January 4, 1897, the said commission could not validly make any award or decision in its favor, and for that reason also the said pretended award and decision is invalid and void.

26. Your orator further shows that it had no notice or knowledge and no means of knowing at the time of entering into the said agreement of the 4th of January, 1897, with the said defendant, The Cauca Company, of the true state of the facts and that the said Cauca Company had expended no money and was not pecuniarily interested in the claims for cost of the partial construction of a portion of said railroad, but that on the contrary it was induced to enter into said agreement through the false and fraudulent representations of the said Schramme and his associates that the said work of construction had been done and paid for by the said defendant, The Cauca Company.

27. Your orator further shows that during the existence of the said commission and before the resignation of the said Pena and while the said commission was hearing the contentions of the complainant and the defendant, The Cauca Company, the said defendant, The Cauca Company and this complainant, through their respective agents and representatives, entered into a stipulation that the sum of two hundred and thirty-three thousand, nine hundred and nine dollars and fourteen cents had been expended in constructing the said portion of the said railroad so defectively constructed as hereinbefore set forth and in rolling stock, tools, &c., and agreed that the said commission should find that the said defendant, The Cauca Company, had expended that sum on said works, which stipulation it is prayed may be taken as a part hereof and a copy of which is hereto attached, marked Complainant's Exhibit
13 No. 18. That by the agreement creating the said arbitration it was admitted that the complainant had already paid the defendant, The Cauca Company, on account of the matter submitted to arbitration the sum of two hundred thousand dollars, that no other expenditures within the terms of the submission to arbitration were shown, so that the said arbitrators had in no event, the power to award to the defendant, The Cauca Company, any sum in excess of thirty-three thousand nine hundred and nine dollars and four-

teen cents, and the said pretended award, being for an amount in excess of said sum, is for that reason also invalid.

28. Your orator further shows that by the pretended award or decision of said Haupt and Schramme, hereinbefore referred to, the complainant is held to be liable to pay to the defendant, The Cauco Company, the sum of four hundred and fifty-two thousand and forty-eight dollars and ninety-three cents in addition to the said two hundred thousand dollars already paid, and there is awarded to the said Marcus Stine, not a party to the said agreement, and to whom the commission had no authority to award any sum whatsoever, the sum of ten thousand dollars, all gold coin of the United States of America, and it is for that reason also invalid.

29. Your orator further shows that the said Haupt and Schramme reached the said decision or award by undertaking to allow to the defendant, The Cauca Company, claims not founded upon any matter submitted to them as arbitrators by the said agreement of January 4th, 1897, but wholly outside the same and wholly without their jurisdiction, except the said sum of thirty-three thousand, nine hundred and nine dollars and fourteen cents. And your orator is advised and believes and therefore charges that even if the said award or decision were not invalid for all or any of the reasons hereinbefore set forth, that the said arbitrators having proceeded beyond the articles of submission and determined upon matters not left to their judgment by the said agreement, their said allowances of the same are utterly without jurisdiction and null and void, and their said pretended award is for this reason also invalid.

30. Your orator further shows that the said commission provided for the stenographic report and printing of all of the proceedings had before them, and that the same have been fully and completely reported, transcribed and printed, and a copy of said report, duly certified by the secretary of the said commission, and the
14 accuracy of which is verified by his affidavits, is herewith filed. The said report is in three volumes marked Complainant's Exhibits Nos. 19, 20 and 21, which it is prayed may be taken and read as a part of this bill of complaint. By an accident one of the papers directed to be included in said printed report, to wit: the act of Congress of Colombia known as law No. 41 of 1896, hereinbefore mentioned as Complainant's Exhibit 11, was omitted, and by the direction of the said arbitrators certain other papers before the commission, all of which are referred to and described in the printed report of proceedings, were omitted from said printed report, as appears by the affidavit of said secretary, Harold R. Miller, herewith filed and prayed to be taken and read as a part hereof, and which is marked Complainant's Exhibit No. 22.

31. Your orator further shows that the several items of which the pretended award or decision of four hundred and sixty-two thousand and forty-eight dollars and ninety-three cents is composed specifically appear in the said proceedings, together with the grounds of the claims of the defendant, The Cauca Company, and the grounds of admitting and allowing the same by the said arbitrators Haupt and Schramme, and your orator is advised and believes, and there-

fore charges, that all of said items except the sum of thirty-three thousand, nine hundred and nine dollars and fourteen cents, hereinbefore mentioned, are wholly without the subject-matter submitted to the said arbitrators under the said agreement of the fourth of January, 1897, and are in no respect connected therewith, and that no warrant or authority existed in the said arbitrators to allow the same or any part thereof. And your orator is further advised and believes and therefore charges that the said pretended decision or award, being wholly without the power, authority and jurisdiction of the said arbitrators, that this complainant is not bound thereby, but that the said pretended award or decision having been made under colorable and pretended authority of this complainant, this complainant is entitled to have the same decreed by this court to be null and void.

32. Your orator further shows that the said Haupt and Schramme, in pursuance of a pretended but erroneous and unlawful construction of the agreement of January 4, 1897, undertook to allow and award as one of the items composing the said sum of four hundred and sixty-two thousand and forty-eight dollars and ninety-three cents last above mentioned, the sum of one hundred and eight thousand one hundred and eighty-one dollars and forty-two
15 cents claimed as salaries to the said Schramme and the said Cherry as executive officers of the defendant, The Columbian Construction and Improvement Company, the said salaries being for pretended services to said company from December 1, 1890, to January 26, 1897, covering a period of more than two years after the said forfeiture had been declared by the Congress of this complainant, and nearly a month after the signing of the said agreement under which said arbitration was acting. And in further pursuance of the same unlawful and erroneous construction of said agreement they undertook to allow and award, as one of the items composing said aggregate sum, the sum of one hundred and forty-eight thousand, one hundred and sixty-four dollars and thirty-three cents, the amount claimed to be due from the defendant The Columbian Construction and Improvement Company to the said Cherry for the assignment to it of his interest in the contract between said Cherry and the defendant, The Cauca Company.

The pretext for said allowance by said Haupt and Schramme was that said purchase from said Cherry by the defendant The Columbian Construction and Improvement Company of his pretended rights under the concession of lands, mines and other rights and privileges granted by complainant in the contract of August 27, 1890, was a legitimate part of the cost of construction of the six miles, part of said road, in said contract mentioned.

But your orator says that, as hereinbefore shown, the said concession was granted in consideration of the building of the entire three hundred miles of railroad mentioned in said contract, as fully appears therein, and the said concession had been forfeited, as hereinbefore shown, because only six miles of said road had been built, and the question of the validity of said forfeiture or the value of said concession was not submitted to the judgment of the arbitrators by

the agreement of January 4th, 1897, but by the express terms thereof the defendant, The Cauca Company, surrendered and abandoned all rights to the concession or any part thereof, and by the express terms of said agreement agreed to accept in lieu of any rights under the concession such amount as it should prove to have expended in the construction of said six miles of said road, and the cost of tools, rolling stock and the like used thereon and existing at the time of the surrender; and the ascertainment of the amount of said expenditures was the only matter submitted to the said arbitrators by said agreement of January 4, 1897.

16 And the said Haupt and Schramme also, in pursuance of said unlawful and erroneous construction of said agreement, allowed as part of the said aggregate award the sum of twenty-nine thousand, two hundred dollars claimed by the said Schramme and Cherry as extraordinary compensation for special services rendered by them subsequent to November 16, 1894, in effecting a compromise with this complainant and securing from this complainant the agreement under which the said arbitrators were acting.

And your orator also shows that among the items composing the said aggregate sum of said pretended award is the sum of thirty-two thousand and three hundred and thirty-three dollars and forty cents claimed for interest paid upon bonds issued and sold by the said "The Colombian Construction and Improvement Company." And your orator says that no one of the said items, nor any of the other items composing the said aggregate sum of said pretended award of four hundred and sixty-two thousand and forty-eight dollars and ninety-three cents, except the hereinbefore-mentioned sum of thirty-three thousand, nine hundred and nine dollars and fourteen cents, was paid out or expended for or in connection with any matter or thing embraced within the subject-matter submitted to the said arbitrators by the agreement of January 4th, 1897, but that all of said items are wholly and entirely outside of said submission, and entirely beyond the power, authority and jurisdiction conferred upon the said arbitrators, and therefore null and void in law. And your orator further charges that the said Haupt and Schramme confederated and combined together, and made an exaggerated, unconscionable, and inequitable award against your complainant, and that the said allowance of said items is not only null and void in law, but is grossly exaggerated and wholly against equity and good conscience.

33. Your orator further shows that it is advised and believes and therefore charges that the said items composing the totality of said pretended award being separable, and the complainant having through its agents stipulated and agreed to a finding against it of the said sum of thirty-three thousand, nine hundred and nine dollars and fourteen cents in addition to the sum of two hundred thousand already paid it is now ready and willing, and here tenders itself ready to pay to the defendant, The Cauca Company, the said sum of thirty-three thousand, nine hundred and nine dollars and fourteen cents, notwithstanding the nullity of the said pretended award, the irregularities in the said proceedings, and the improper and un-

lawful conduct of the defendants and of the arbitrators,
17 Haupt and Schramme, hereinbefore referred to. But your orator is advised and believes, and therefore charges, that any claim which the defendant, The Colombian Construction and Improvement Company, may pretend to have in the premises against this complainant must be satisfied out of said sum of thirty-three thousand, nine hundred and nine dollars and fourteen cents.

34. Your orator further shows that it is informed and believes and therefore charges that the defendant, The Cauca Company, through its counsel, Mr. Marcus Stine, and its representative in the arbitration, Christian F. Schramme, has caused copies of the said pretended award and decision made by the said Schramme and Haupt to be sent to the Secretary of State of the United States of America and to the diplomatic representative of this complainant at Washington, and the said defendant, The Cauca Company, represents and pretends that the said award is valid, and also represents and pretends that this complainant is liable to the said defendant, The Cauca Company, in the amount of the said award under the pretense that said award is made by the authority of this complainant under the said agreement of January 4, 1897. That by reason of the said agreement and the apparent and colorable right of said pretended award the said defendant, The Cauca Company, is enabled to harass and annoy this complainant and bring it into discredit unless the pretended award aforesaid shall be decreed to be invalid. And this complainant not desiring to avail itself of its sovereign authority to repudiate said award, nor to subject the same to the analysis and adjudication of its own courts, but on the contrary, desiring, in the same spirit of fairness in which it *is* established the said arbitration, to extend to the defendant a fair and impartial tribunal for the ascertainment and declaration of its rights, has authorized these proceedings in the judicial tribunals of the United States of America, of which the defendants are citizens.

The complainant therefore prays:

I. That the United States writ of subpœna may issue to the defendants, The Cauca Company and The Colombian Construction and Improvement Company, defendants herein, commanding them and each of them to appear and answer, but without oath, the exigencies of this bill, the oath to said answers being hereby expressly waived.

II. That a preliminary restraining order issue herein forth-
18 with, to be served with the process of this court on each and both the said defendants, restraining them and each of them, their and each of their agents, attorneys and servants pending the final determination of this cause from in any manner asserting the validity of the said alleged award, or setting up or pretending to any manner of claim or demand against this complainant by reason of the same or anything therein contained, or from in any manner endeavoring to harass, annoy or discredit the complainant by the assertion of any matter or right whatsoever founded upon the said alleged award.

III. That the defendant, The Colombian Construction and Im-

provement Company, be required to discover what, if any, claim against this complainant it pretends to have by reason of any — the matters and things hereinbefore referred to or what, if any, claims, rights or interests it pretends to have by reason of the said pretended award of the said Haupt and Schramme, or anything therein contained.

IV. That the said defendants and each of them, their and each of their attorneys, agents and servants may be perpetually enjoined from in any manner asserting the validity of the said alleged award or setting up or pretending to any manner of claim or demand against this complainant by reason of the same or anything therein contained, or from in any manner endeavoring to harass, annoy or discredit this complainant by the assertion of any matter or right whatsoever founded upon the said alleged award.

V. That the said pretended award and decision by said Christian F. Schramme and Lewis M. Haupt, claiming to act as arbitrators under the agreement of January, 4th, 1897, between this complainant and the defendant, The Cauca Company, which said pretended award was promulgated by the said Schramme and Haupt on the 22nd day of October, 1897, may by this court be decreed to be utterly null and void and of no effect.

VI. That the said defendant, The Cauca Company, be ordered and decreed to bring into this court and deliver up to be cancelled the pretended award aforesaid.

VII. That your complainant may have all such other, fur-
19 ther and general relief as the nature of its case may require and to this honorable court may seem meet and proper.

THE REPUBLIC OF COLOMBIA,

By its duly authorized agent,

(Signed) JULIO RENGIFO,
Charge d'Affaires ad Interim of the Republic of Colombia, in the United States of America.

(Signed) CALDERON CARLISLE,
WILLIAM G. JOHNSON,
Solicitors for the Complainant.
EDWIN MAXWELL, *Of Counsel.*

CITY OF WASHINGTON,
District of Columbia, } ss:

I do solemnly swear that I have read the annexed and aforegoing bill of The Republic of Colombia, complainant, against The Cauca Company and The Colombian Construction and Improvement Company, defendants, and know the contents thereof, and the facts therein stated as true, are true, and those stated on information and belief I verily believe to be true.

(Signed) JULIO RENGIFO.

Subscribed and sworn to before me this tenth day of December, 1897.

[NOTARIAL SEAL.] (Signed) OSCAR LUCKETT,
Notary Public.

* * * * * * *

871 In the Circuit Court of the United States for the District of West Virginia. In Equity.

THE REPUBLIC OF COLOMBIA, Complainant,
vs.
THE "CAUCA COMPANY" and "THE COLOMBIAN CONSTRUCTION and Improvement Company," Defendants.

Answer of the Defendants.

Filed March 7th, 1898.

Cowen, Cross and Bond, solicitors for defendants.
John W. Beaumont, Edward H. Murphy, of counsel.

872 In the Circuit Court of the United States for the District of West Virginia.

THE REPUBLIC OF COLOMBIA, Complainant,
vs.
THE "CAUCA COMPANY" and "THE COLOMBIAN CONSTRUCTION and Improvement Company," Defendants.

Answer of the defendants.

The "Cauca Company" and "The Colombian Construction and Improvement Company," the defendants in the aforegoing cause, now, and at all times hereafter, saving and reserving all and all manner of benefit of advantage of exception, or otherwise, that can or may be had or done, to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, jointly and severally answering, say:

First. They admit that the complainant, The Republic of Colombia, is a body politic and a sovereign and foreign state at peace with the United States, and having diplomatic relations therewith; and also that these defendants are corporations created and existing under the laws of the State of West Virginia; and also that the said Don Julio Rengifo was at the time, when said bill of complaint was filed chargé d'affairs of the complainant representing said Republic at Washington; and that these defendants have an office and place of business in the city of New York, in the State of New York; and that as permitted and required by their articles of incorporation they have not now, and never have had, any office in the State of West Virginia, but that the said John B. Floyd mentioned was their true and lawful attorney appointed under the powers of attorney executed by these defendants, certified copies of which are filed by the complainant with its bill of complaint and marked Complainant's Exhibits, Nos. 2 and 3.

First. In answer to the allegation in the first paragraph of said bill of complaint contained, they say that it is true that on or about

the said 27th day of August, 1890, the Republic of Colombia was the owner of a certain railroad running eastwardly from Buenaventura towards the city of Manizales; that the length of the said road was about the length mentioned in the said paragraph, to wit: twenty-nine kilometers and seven hundred and fifty meters, which was nearly completed; that about two kilometers and six
873 hundred and fifty meters were partially completed, and that a portion of the said road was being operated by or under the direction of the complainant (the circumstances of the construction of the same being more fully and particularly mentioned in a subsequent portion of this answer); but they deny that the said railroad was in a condition for proper operation, but, on the contrary, they allege that the said road-bed and rails were in a dilapidated condition, and before the same could be suitably operated that the then existing railway required repairs and reconstruction which amounted to, in effect, an entire rebuilding of the same.

Second. These defendants say that it is true, as alleged in the second paragraph of said bill of complaint, that on or about the said 27th day of August, 1890, a certain James L. Cherry, a citizen of the United States, did enter into a written contract with the said Republic of Colombia, through its authorized agents and officers, a translation of the text of said contract is given as Exhibit No. 4 filed with the bill; (and these defendants say that the said James L. Cherry was an accomplished engineer and had had large experience in the construction of railroads, and had been in business some time in the city of San Francisco; and that on or about said date the said James L. Cherry visited the said Republic of Colombia, and after careful preliminary examinations and explorations and negotiations with the officials of the said complainant, he did execute said contract for the construction of a railway in the said Republic of Colombia, which said railway was to commence at the port of Buenaventura and to run to the city of Manizales via the town of Cali.) These defendants neither admit nor deny the allegation in the said second paragraph, to wit: that the national constitution of the Republic of Colombia provides for the approval or disapproval by its congress of such contracts, nevertheless say that the said contract was fully ratified and approved by the due and proper officials of the said complainant, and became and was an existing contract between the said complainant and the said James L. Cherry.

Third. These defendants admit that under and by virtue of the grant, or, as expressed, the "concession" from the said Republic of Colombia, the said Cherry contracted to build the uncompleted portion of the said railway and to construct and operate the line of railway from said city of Buenaventura unto the city of Manizales, which was to be commenced within four months of the date of the said contract, and to be completed to the city of Cali within a period of four years, but said construction and completion was to be subject to interruptions from fortuitous circumstances, and delays occasioned by the government, and unavoidable by the contractor or his assignees (as provided in the concession, Exhibit 4, articles 4, 5,

10, etc.). The limitation of time was not absolute, but was
874 subject to conditions, as appear from the terms of the concession. That many delays and hindrances occurred in the progress of the said work entirely without the fault of the said Cherry or his assignees, which prevented the completion of the said work in the form and manner as hereinafter more fully specified, which said hindrances were well known unto the said complainant and its officials, and were acknowledged by the same as grounds upon which the time for the completion of said work should be extended, under the contract.

Fourth. These defendants admit the allegations contained in the fourth paragraph of the said bill of complaint, to wit: That in consideration of the faithful performance of the said contract by the said Cherry or his assignees, the said Republic of Colombia granted unto him and them the exclusive privilege of constructing and operating the said railroad, and also the exclusive privilege of constructing and operating other important lateral and connecting railroads, and in addition thereto, the said concession included large and liberal grants of mines upon the route of the said road, to wit: valuable coal mines and minerals as mentioned in the 22nd article of said concession (Exhibit No. 4); and also the right to construct ports, wharves, and landing places; to establish telegraph and telephone lines as mentioned in article 30 of said concession, together with certain valuable land grants along the route of said railways and branches.

Fifth. These defendants state that within said period of four months the said Cherry consulted with a number of wealthy and influential capitalists in the city of New York, in the State of New York, and in the State of New Jersey, and also in the city of Chicago, in the State of Illinois, and agreed with said parties that a corporation or corporations necessary for the completion of the said work should be formed, and that the said Cherry would, under the terms of the said concession (Exhibit No. 4), assign the same unto them as under the terms of article 34 of said concession the said Cherry had the right to do; and that for the purpose of completing the said contract in good faith this defendant, The "Cauca Company," was incorporated on or about the said 29th day of November, 1890, as will appear by a certified copy of the charter of this defendant filed with the bill of complaint and marked Complainant's Exhibit No. 5.

Sixth. In answer to the allegations in the sixth paragraph of the bill of complaint contained, these defendants say that it is true that on or about the said 29th day of November, 1890, this defendant, "The Colombian Construction and Improvement Company," was incorporated under the laws of the State of West Virginia for the purpose of aiding in the construction of the said railway and
875 for other purposes, and that a copy of said charter is filed with the bill of complaint and marked Complainant's Exhibit No. 6.

Seventh. These defendants admit that on or about the said 29th day of November, 1890, the said James L. Cherry entered into a contract with this defendant, The "Cauca Company," and also with

this defendant, "The Colombian Construction and Improvement Company," copies of which contracts are filed as Complainant's Exhibits Nos. 7 and 8.

Eighth. In answer to the allegations in the said eighth paragraph of the bill of complaint contained these defendants deny the allegation therein contained, to wit: That the incorporation of these defendants *were* "part and parcel of a scheme to cheat and defraud the complainant and to escape the just obligations of the contract between the complainant and the said Cherry, and to evade the faithful performance thereof, and at the same time to secure to the said Cherry and his associates the beneficial provisions of said contract between the complainant and the said Cherry;" but, on the contrary, they say that the incorporation of these defendants was a proper method of acquiring the amount of capital necessary to make the very extensive public works, to wit: the railroads in the said concession (Exhibit No. 4) described; and that the stockholders and directors of the said defendants were numerous, responsible and wealthy persons; and that these defendants were incorporated in good faith for the purpose of carrying out the provisions of the said contract or concession, all of which facts were well known unto the complainant and its public officials, and these defendants were recognized and accepted as assignees of the said James L. Cherry, and acknowledged and received in his room, place and stead as his legal successors, and obligated to perform the terms of the said contract or concession and entitled unto the benefits thereof; and that had not the complainant, without just cause, and illegally violating the said concession, and by confiscating the property of these defendants, and by its own action prevented them from completing the same, these defendants aver and charge that they would have been able to complete the public works mentioned in the said concession.

Ninth. These defendants, in answer to the allegations in the ninth paragraph of said bill of complaint contained, for answer thereto, say that they did, immediately after the assignment unto them of the said Cherry concession, commence in good faith and within said four months, from the said 27th day of August, 1890, to construct the said railroad and to repair the existing roads, and to make preliminary and other surveys for the portions of said line to be done; and they ordered early in the year 1891 large amounts of supplies suitable for such purpose, to wit: a locomotive
876 from the Baldwin works upon May 18th, 1891, and a large amount of rails and material for construction which were sent out from New York, and from England, unto Buenaventura; and used all due diligence in the construction of the railroad from said period of commencement of the said work until the date when they were arrested in the execution of the said contract and prevented from further compliance with the same by the unlawful act of the complainant in seizing the property of these defendants. The difficulties arising from the climate of the said Republic of Colombia were almost insuperable, the location of the said railway being a short distance north of the equator, and many of the bridges erected by these defendants were washed away by the floods incident to

such climate, and the popular sentiment in said country having become intensely antagonistic unto these defendants, all united in interposing insuperable obstacles to the early completion of said contract within the time required; and recognizing the difficulties which these defendants had encountered from the causes above mentioned, the said complainant prior to the expiration of the four years within which said work was to be completed, to wit, four years from the 27th day of August, 1890 (which would be until the 27th day of August, 1894), through its minister of public works, duly authorized for said purpose by said complainant, on or about the 10th day of December, 1892, extended said period of completion until the 18th day of October, 1896. Such extension was executed for and on behalf of the complainant by José Manuel Goenaga, minister of public works, duly authorized by the vice-president of the Republic, Signor M. A. Caro, the then acting executive of the complainant, also authorized this defendant, The "Cauca Company," to introduce into said Republic Chinese labor to the amount of 3,000 persons, which said extension was accepted in good faith by these defendants, and was ratified and authorized by the government of the complainant at the city of Bogota of the 11th day of December, 1892 (a copy of the instrument of said extension having been filed by the counsel for the complainant, to wit: Francisco J. Cisneros, and appearing in the brief and papers submitted by him for and on behalf of the government before the arbitration commission hereinafter referred to).

Prior to the expiration of said extended time, to wit: on or about the 16th day of November, 1894, the Congress of the complainant decreed the forfeiture of the concession granted unto the said Cherry and assigned unto these defendants, which will appear by reference to the Exhibit of the Complainant No. 10 filed with its bill of complaint; which said forfeiture was entirely illegal and deprived these defendants of the opportunity to go on and complete the said works.

These defendants deny the allegations in the said 9th para-
877 graph of said bill of complaint contained, to wit, that the work which had been done was imperfectly done, and not in strict compliance with the requirements of the contract or concession, and allege that the same was substantially completed in full accord with said contract and with the assent of the agents of the complainant; and that said allegations so made are made in the attempt to justify the unlawful conduct of the said complainant; and that the matters and things stated in the affidavit of the said Francisco J. Cisneros, filed with the bill of complaint and marked Exhibit No. 9, have no relevancy in said matter. The statement that the railway was not of the proper width mentioned in the contract is an immaterial and trivial matter; inasmuch as the width required by the twelfth clause of the said concession (Exhibit No. 4) was "one meter in width between rails," which is thirty-nine and thirty-seven-hundredths (39.37) inches, whereas the width of the road already constructed by the said Cisneros was thirty-six (36) inches, the standard narrow-gauge width; and the said road was continued at said width to obviate the necessity of changing the rolling stock

and equipment thereon, and the maintenance of said original width was patent to the complainant and to all its agents during the years during which the same was being constructed, and was not objected to by them, or any of them. Said allegation in said affidavit of Cisneros is an afterthought and an attempt by a trivial technicality to justify the complainant in its dealings with these defendants. In reference to the concluding allegation of the said ninth paragraph of the bill of complaint that "and your orator is informed and believes and therefore charges that no part of said work was done by the defendant, The 'Cauca Company,'" these defendants say that the entire work was done for and on behalf of the said "Cauca Company," which became responsible for the same by reason of the issue of its bonds and stock for that purpose. The formation of this defendant, "The Colombian Construction and Improvement Company," was fully known unto the said complainant, and it was also known that the work was done by it for and on account of the "Cauca Company;" that the ownership of the stock in the said companies was practically the same, and that all the negotiations subsequent between the government and these defendants were carried on in the name of the "Cauca Company," and the commission was established to pass upon the rights and the claims of the said "Cauca Company," which held title to the property and represented all the parties in interest; and that the said allegation in the said ninth paragraph of the bill of complaint aforesaid is a minute technicality without any substantial basis in fact.

Tenth. In answer to the allegation in the tenth paragraph
878 of the bill of complaint contained, these defendants say that the failure to complete the road within the period of four years and in the specified manner *were* alleged to be causes of forfeiture by the Republic of Colombia, but these defendants say that there were no causes under said contract for the forfeiture of the same. It was specifically provided by the 39th article in said concession that the failure to complete the same within four years should be a cause for the forfeiture of the said contract, but there was an exception "in case of fortuitous circumstances or *vis major*," which fortuitous circumstances and *vis major* intervened and were well known unto the complainant; and also that by the sixth article plans, profiles and maps of the line were to be made and forwarded to the government, and certain sums of money were to be deposited with the agent of the government, to wit, the sum of fifty thousand dollars ($50,000) of American gold, which said sum of money was duly deposited, and these defendants strictly complied with all the requirements in said clauses contained, and also those contained in the 34th and 35th articles.

The illegality of the action of the said complainant in so forfeiting said contract was expressly admitted by the counsel for the government upon page ten (10) of the Complainant's Exhibit, No. 19 (proceedings of the arbitration), and the said counsel of the government, to wit, Francisco J. Cisneros, stated that the confiscation of the property of these defendants "was the only wrong action of the government."

Eleventh. In answer to the allegations in the eleventh paragrap of the bill of complaint contained, these defendants deny that an forfeiture of said contract had duly occurred as alleged therein, bu on the contrary, these defendants aver that owing to the delay hindrances, neglects and failures of the complainant and its office to comply with the provisions of the said concession, and on accou of the physical obstacles, and the fortuitous circumstances whic intervened, delaying the progress of the work, that the said contra or concession was in full force and effect when the Congress of th Republic of Colombia enacted the law entitled "Law 60, 16th N vember, 1894," whereby the said complainant through its Congre attempted to forfeit the said concession and to divest these defen ants of their property rights in the same, and in the railway an appurtenances which they had constructed thereunder; and sai decree or so-called law stated that Congress did not approve of th extension of the time for the construction of the said railroad, usin the expression as follows:

"Inasmuch as Congress does not approve of the contract 98 1892, carried out between the minister of public works and M Victor Mallarino, general representative of the Cauca Rai 879 road Company, which deals with the extension of time f the construction of the said railroad."

These defendants aver and charge that the action of the said com plainant was in derogation of the said concession or contract orig nally made with the said Cherry, hereinbefore referred to, and tha the same was an act of confiscation of the property of these defen ants and in violation of the constitution of the said Republic of C lombia, to wit, the 34th article thereof, which states: "The punis ment of confiscation shall not be imposed;" and also in violation the 32d article of said constitution, which is: "In time of peace n person shall be deprived of his property, wholly or in part, except a a punishment, or judicial compulsion, or indemnity, or general co tribution, in accordance with law;" and these defendants state tha they are advised that the constitution of the said Republic of Colom bia, in the 33d article, renders it, the said complainant, responsibl for all illegal or improper acts in case the same shall have take place, the clause of the said 33d article being: "The nation sha always be responsible for the expropriations made by the gover ment or its agents."

And these defendants deny that the said extension of time granted unto them by the executive of the government was an i valid extension, but, on the contrary, these defendants aver that th same was a valid extension, and that the same was authorized an assented to by the executive of the complainant in recognition of th fact that by reason of the fortuitous circumstances and *vis major*, an the defaults of the complainant itself, no ground of forfeiture coul exist.

Twelfth. In answer to the allegations in the twelfth paragraph the bill of complaint contained, these defendants say that it is tru that no proceedings in pursuance of said forfeiture were taken an that no application was made to refer the question of the right

forfeiture to arbitration as provided in article 7 of said contract, inasmuch as the said concession was improperly forfeited under the terms thereof. As soon as the act of forfeiture was passed the United States minister to the Republic of Colombia, Hon. L. F. McKinney, at the instance and request of the then Secretary of State, the late Hon. Walter Q. Gresham, intervened to protect the rights of these defendants as American citizens; such intervention was made through these diplomatic channels throughout the year 1895. Later when the said complainant, through its officers, insisted on the cancellation of the said contract, the Hon. Richard Olney, then Secretary of State, cabled the American minister to give the defendants and their property the full protection of the United States Government from the improper action of the complainant in the premises. And these defendants are advised and therefore state that the allegation
880 in the said twelfth paragraph of said bill of complaint, to wit:

"This complainant, yielding to the solicitations of the said Cherry as the agent and attorney of the defendant, The 'Cauca Company,' and in deference to the friendly intervention in its behalf of the minister of the United States at Bogota, but not in pursuance of any negotiations with the United States of America, and without entering into any compact, agreement or stipulation with the said United States or their representative, voluntarily decided not to avail itself of its right under the contract to assume, without any compensation, the ownership of the work that had been done," is not in accordance with the facts. These defendants aver and state that the action of the complainant in proceeding to complete the spoliation of these defendants was arrested by the American minister, acting under instructions from the State Department at Washington, who intervened for the purpose of protecting the property of these defendants as American citizens from the action of the complainant. All of which is shown by the testimony of the said L. F. McKinney, the then minister at Bogota, which appears in the Exhibit No. 19, filed by the complainant with its bill of complaint, at the 259th and subsequent pages thereof. These defendants further aver and state that the act of the Congress of the complainant, which is entitled the "Law forty-one of 1896" (the Spanish text whereof, and the translation whereof are given with the bill of complaint as Complainant's Exhibit No. 11), was passed by the Congress of the complainant only in consequence of the prompt and peremptory action of the American minister, acting under instructions from the State Department, at Washington.

Under said law, the commission which made the award was constituted, which said act, law or decree was designed by the diplomatic authorities of the United States and the Congress of the complainant to protect the property of these defendants, and to give unto them full and adequate compensation for their great losses sustained by the action of the complainant. By the terms of the first article thereof it was provided: "The executive is hereby fully empowered to equitably compromise with the grantee of the railroad from Buenaventura to Manizales, or his lawful representatives, the questions or differences that may arise in consequence of the declaration of lapse

of franchise referred to in the resolution No. 9, of October 16th, 1895, or by reason of the stipulations of the contract of August 27, 1890, approved by law 16 of the same year." So that under and by virtue of the solemn act of the complainant, brought about by the intervention of the United States, there was promised to these defendants full compensation for their property losses and equitable treatment in the ascertainment of the same through the means provided,
881 to wit: the constitution of a tribunal for the purpose of ascertaining the extent of said losses of these defendants in a equitable manner. Under and by virtue of the authority of said law, and through the offices of the American minister at Bogota, these defendants reached the adjustment by which a portion of the undisputed compensation due and owing unto them should be paid and the ascertainment of further compensation should be inquired into, adjudicated, and, when ascertained, should be paid unto them.

The letter of the executive of the complainant, Senor M. A. Caro, upon said subject is found in the exhibit of the complainant No. 21, at page 972 *et seq.* The basis of settlement was agreed upon between the said American minister and the said executive whereby it was provided that the resolution of forfeiture should be suspended and the arbitration tribunal should be constituted for the purpose of giving these defendants *full and adequate* compensation for their losses so incurred. The agreement of January 4th, 1897, provided for the arbitration of the claims of these defendants against the complainant, and constitutes the document filed by the complainant with its bill of complaint, to wit, its Exhibit No. 11. The agreement, provided for the submission to arbitration of the differences between the defendants and the complainant, and also provided in the 4th article thereof for a special commission, to be composed of three members, who were to determine the indemnity to be paid to the defendants. By the 10th article of said agreement the complainant paid unto the said Cherry, the attorney-in-fact and agent of the defendants, the sum of two hundred thousand dollars ($200,000) in gold, which was specifically stated to be on account of such amount of indemnity as the commission might fix, and the said complainant covenanted and agreed that in the event that the said commission should award unto these defendants any greater amount than the sum of $200,000, that the complainant was "to pay the excess at such time and in such manner and on such terms as may be determined by the commission."

These defendants deny the other allegations in said twelfth paragraph of the bill of complaint contained.

Thirteenth. In answer to the allegations in the thirteenth paragraph of the bill of complaint contained, these defendants say that the statements therein are not correct, and they deny that the said constitution of the said commission was a "private agreement," but they aver, on the contrary, that the same was an act of the complainant in its governmental capacity done by it at the instance and request of the United States Government through its official representatives, to wit, the Secretaries of State Gresham and Olney, and through

the minister of the United States at Bogota. The wisdom and
882 prudence of the same are not matters to be considered by the complainant in its bill of complaint, and it is not to be considered that the constitution of said commission was an act of grace by the complainant, but the same was an act of public justice done by said complainant as a government, at the instance of the Government of the United States. The selection of a representative of the complainant and the selection of a representative by these defendants was a part only of the institution of said commission as the selection of the third member or umpire was provided to be made by agreement between the Secretary of State of the United States of America and the minister of Colombia at Washington, so that by reason of the constitution of the said commission as in the manner aforesaid, the same partook of a public and international character and differed from an ordinary reference to arbitration of a trade dispute of merchants.

Fourteenth. These defendants, in answer to the allegations in the fourteenth paragraph of the bill of complaint contained, state that it is true that article 6th of said act for the constitution of the tribunal of adjustment of the differences between the complainant and these defendants did provide that in case any of the members of said commission should decline to act or should resign from the commission or cease to act, that the proceedings should not be invalidated thereby; and the said 6th article did also provide for the appointment of a member of said board in place of the one who should so decline to act or resign, within a specified time, which said appointment should be made by the party represented by such member; and in the event of such non-appointment the Secretary of State of the United States and the minister of Colombia at Washington should proceed by agreement to appoint a person to fill the vacancy. The relevancy and effect of this provision in said article will be considered in a later paragraph of this answer.

Fifteenth. In answer to the allegations in the 15th paragraph of the said bill of complaint contained, these defendants state that it is true that the members of said commission were duly appointed as evidenced by the certificates filed with the bill of complaint and marked Complainant's Exhibits Nos. 13, 14 and 15; and that said appointments of the members of said commission representing the parties hereto, to wit, the complainant and these defendants, were made at Bogota shortly after the execution of the articles providing for the appointment of such commission. The said articles were executed on the 4th day of January, 1897, and the representative of the complainant was appointed on the 11th day of January, 1897; said representative was Senor Manuel H. Pena; the said Pena was appointed by the complainant as its representative for the reason of his entire familiarity with the railroad and property, having acted as an
883 arbitrator between the complainant and Francisco J. Cisneros, who was the attorney-in-fact and counsel of the complainant before the said commission. (The fact being that the said Cisneros had a concession somewhat similar to that vested in the defendants for the purpose of the construction of a road in 1885,

which concession was surrendered on account of a revolution in the governmental conditions of the complainant.) Said Cisneros had received under the arbitration of the said Pena and a certain Mr. Conwell the amount of $1,780,000 for the portion of the road constructed, and a portion of the concession vested in these defendants consisted of the work so constructed by said Cisneros, and for which he had been so compensated to the amount aforesaid; which matters appear in the evidence of the said Cisneros taken before said board in Exhibit No. 20 filed by the complainant with its bill of complaint, at page 598, *et seq.* For these reasons the said Pena was chosen by the said complainant as its representative on said commission. The said Christian F. Schramme was appointed by this defendant, The "Cauca Company," as its representative on account of his having been entirely familiar with all the transactions growing out of the construction of the said road, having been connected with these defendants since their origin. The interest of the said Schramme in the affairs of the defendants was well known at the time he was selected. He was selected because he was familiar with the business affairs of these defendants, and the complainant and its representatives had full knowledge of his said interests and such associations, and assented unto his appointment with full knowledge of such interest. The third member of said commission, Lewis M. Haupt, was appointed by the joint action of Hon. John Sherman, Secretary of State of the United States, and Senor Julio Rengifo, the chargé d'affaires of the Republic of Colombia at Washington. He was selected by these distinguished persons on account of his great knowledge of engineering matters and the construction of railroads, and on account of his high character and standing as an engineer and as a gentleman—he having been professor at one time in West Point Military Academy and subsequently extensively engaged in engineering matters. Such was the reputation and character of the said Lewis M. Haupt that while he was serving on said arbitration commission, the present executive of the United States appointed him as a member of the board to investigate into the proposed construction of the Nicaragua canal, in which important and honorable occupation he is at present engaged.

These defendants state that the said arbitration commission commenced to perform its duties on or about the 3d day of April, 1897, and that it was inaugurated on said date and then adjourned until the 26th day of April, 1897. That by the terms of its consti-
884 tution, to wit, the 8th article thereof, it was allowed for the purpose of transacting its business to sit for a period of 150 days, commencing from its installation, which might be extended for sixty days more in the event that justifiable causes of delay arose; that said commission did consider that the time should be extended and the same was extended by the act of the commission. When it had reached its 35th session on said 22d day of October, it had consumed under the terms of its constitution a period of 202 days, leaving as a limit for the time for its existence the period of 8 days. These defendants are advised, and so state, that before the said 35th session all the

work of the said commission had been performed. It had formulated its finding and had agreed upon the result thereof, as hereinafter stated. All the evidence had been adduced before the said commission by these defendants and by the complainant. Full arguments had been made by counsel for these defendants and for the complainant, and full and elaborate briefs had been filed on behalf of each party. The said briefs were exchanged on or about the 21st day of September, 1897, as appears from the entry on page 792 of the record, to wit: Complainant's Exhibit No. 20; and these defendants here file copies of the said brief, on behalf of themselves, and also a copy of the brief of the Republic of Colombia, which are marked Defendants' Exhibits Briefs Nos. 1 and 2. The brief of the complainant contained certain records before the said commission which do not appear in the other records; and these defendants are advised and so state that the said briefs were made part of the said records and should have been filed by the complainant when it filed the records of said commission.

At an early period in the sessions of the said commission it was determined by the unanimous action of the commission that its decisions should be by a majority vote, and the said Pena and the said Cisneros, as the commissioner and as the counsel and attorney-in-fact of the complainant, acquiesced in said resolution, which thereby became the act of the said Pena. By such action it was agreed by the complainant for and on its behalf that the vote of the majority of said commission should be binding on the same, and should be the act of the said commission.

By the 5th article of the submission, the commission had judicial powers. Being composed of three members, it was necessary to prescribe how it should act, whether by majority or unanimously. It had the power to determine. "It shall determine the procedure to be followed in the exercise of the powers conferred upon it both as to its own acts as well as to the proceedings of the parties themselves" (5 article of Exhibit 12, p. 54, bill of complaint). The decision of the commission upon such question is to be found on page 11 of the record of the said commission, to wit, Complainant's Exhibit No. 19.

These defendants do not know whether said action of said
885 Pena in so resigning after the said commission had reached a definite result was done by the order or "with the knowledge of the complainant," but these defendants are advised, and so charge, that the said resignation took place with the knowledge and assent of the diplomatic representative of the complainant at Washington, to wit, the said Senor Julio Rengifo, chargé d'affaires, and was assented to by him, with the intent, if possible, to make null and void the action of his government and of the United States Government, and the concurrence of the parties hereto for the purpose of a definite ascertainment of the rights of these defendants. These defendants ask for a full discovery of the knowledge of the said agent of the complainant upon these subjects; and for the production of the telegrams and letters which passed between them upon such proposed resignation.

These defendants are advised, and so state, that the resignation of the said Pena was not proper under the circumstances.

Neither at the time of the attempted resignation of said Pena, did he or any person on behalf of complainant request or tender the appointment of a commissioner in his place. Nor has the complainant in its bill of complaint averred that it was willing to fill such vacancy and complete the arbitration. That such action was designed by him to destroy the reference to arbitration, and to leave these defendants without remedy, inasmuch as it was not possible within the time allotted for the existence of the commission to fill the vacancy made by Pena; and that his said resignation was not made in good faith and under the circumstances was null and void.

Sixteenth. In answer to the allegations in the 16th paragraph of the bill of complaint contained, these defendants state that it was not possible for them to have made the request to have another member of the commission appointed within the time limited for the continuance of the commission. Before such action could have taken place the time would have elapsed for the existence of the commission, to wit, the 30th day of October, when the time limit would have been reached; but that the said Pena had participated in all the proceedings, and was aware of the finding of the commission, and his resignation was for the purpose of destroying the commission and leaving these defendants remediless in the premises.

Seventeenth. In answer to the allegations in the 17th paragraph of said bill of complaint contained, these defendants say that it appears from the record filed by the complainant that the testimony was closed at the 29th session, which was held on the 10th day of September, 1897, and that the commission then adjourned
886 until the further order of the chair for the purpose of considering the matters brought before it, and for the purpose of considering the briefs of counsel which were to be filed on the 21st of September. The commission reconvened regularly on the call of its chairman for its 30th session on the 12th day af October, 1897, at which session all the questions were discussed in regard to the scope of the convention and the indemnity to be given to these defendants by such commission; and the chairman, Lewis M. Haupt, submitted a preliminary report drafted by him. Said meeting then adjourned until the 14th day of October, when it held its 31st session, all the members being present. It met for its 32d session on the 15th day of October, and the said Pena, on behalf of the complainant, filed a written opinion as to his findings in the premises, and the finding of the said Pena was overruled by a majority of the commission. At said meeting the commission by a vote adopted the finding of the said Lewis M. Haupt as its finding. All of which will appear by the proceedings of the commission thereon from pages 795 to 871 of the record, Complainant's Exhibit No. 20. On the question of the adoption of the chairman's finding the said Pena voted in the negative, but the affirmative action of the other commissioners then and there became the action of the said commission, including that of the said Pena. So that the said

commission, on the said 15th day of October, 1897, when the said Pena was present, had completed to all intents and purposes its finding. At the thirty-third and thirty-fourth sessions of the said commission, on the 18th and 19th days of October, 1897 (the minutes of which are given on pages 872 to 906 of the said record, Exhibit No. 20), when the said Pena was present, all the details of the said finding were passed upon and agreed unto by a majority of the commissioners. At the 35th session of said commission, on the 22d day of October, after the work of the said commission had been completed and all the details of the award had been determined, ascertained and voted upon, the said Manuel H. Pena handed unto the commission what purported to be his resignation, all which appears on the 907 page of the record, Exhibit No. 20. Defendants therefore aver and charge that said resignation so made under the said circumstances was agreed upon and designed by the said Pena and by the said Francisco J. Cisneros, attorney-in-fact of complainant, to abrogate all the actions of the said commission.

The commission then determined to proceed in the absence of the said Pena, and did so proceed. These defendants deny that the commission acted wholly under the advice of Marcus Stine, who was counsel for these defendants at said time, and deny that the said commission considered or decided matters not acted upon by the full commission before that time. These defendants are advised, and so state, that the action of the said commission
887 was legal and proper, and that in finally formulating the award reached by the commission before the pretended retirement of the said Pena, it acted legally, and properly and took the only action that it was proper, just and legal for it to take. The printed copy of said award is filed with the complainant's bill of complaint as Exhibit No. 16, to which reference is made.

Eighteenth. These defendants, for answer to the allegations in 18th paragraph of the said bill of complaint contained, say that they deny the allegations therein contained; and these defendants are advised that it was not necessary or proper in the then status of the arbitration that another arbitrator should have been appointed, and they deny that the said award so found whilst the said Pena was a member of said board is *ultra vires* and void, but, on the contrary, they are advised as a matter of law that the said finding is genuine, and valid, and binding upon the complainant in this proceeding. These defendants are advised and aver that the resignation of said Pena was entirely without effect to invalidate the proceedings of the commission, or to affect the power of a majority of the same to conclude and perfect the findings and award of such commission.

Nineteenth. In answer to the allegations in the 19th paragraph of the bill of complaint contained, these defendants deny that the said Christian F. Schramme and the said Lewis M. Haupt failed in their duty of fairness and impartiality, or misconducted themselves at the last two meetings so held by them as charged, by taking in and admitting as a party to their deliberations the said Marcus Stine, and under and by his directions causing to be destroyed the minutes of their proceedings. They state that said parties did not destroy

the minutes of any proceedings. But being surprised at the irregular and unexpected action of said Pena that they at first considered that they would report unto the Secretary of State of the United States the fact of his resignation. They commenced to draw up a statement of the same to be forwarded to the Secretary of State, but after reflection they considered that the same was not necessary, whereupon they destroyed the same. They did not interfere in the slightest way with the minutes of the said meetings, nor did they suppress any thereof, nor did they fabricate or manufacture any of the same. The said charges so recklessly made by the complainant in its bill of complaint are absolutely without any foundation in fact. Neither did the said Stine fabricate any of the said minutes. The fact was, that when the said Haupt and the said Schramme were informed of the withdrawal of the said Pena and also of the said Cisneros, as detailed on the said 22d day of October, 1897, said Stine stated that in his opinion it was not proper or necessary to address any communication to the Secretary of State of the
888 United States for the reason that said official had no interest in said arbitration, than by his coaction with the Colombian chargé d'affaires in designating the third arbitrator. The proposed communication to the said Secretary of State, which had been dictated partially by the said Haupt, and which was ordered to be cancelled by him, for the reason aforesaid was not a part of the minutes. In place of consulting with the said Marcus Stine, who had been counsel for the defendants, the said Lewis M. Haupt and Christian F. Schramme sought the advice of Mr. Louis Marshall, a member of the bar of New York in good standing and repute, and it was under his advice that they acted.

Twentieth. These defendants in answer to the allegations in the 20th paragraph of the said bill of complaint contained, say that they deny the allegations therein contained, to wit, "that the said Haupt in violation of his duty, impartially and fairly to consider and decide, as required by the agreement creating the said commission, the matters in controversy submitted to it by the parties thereto, before the various matters in behalf of the parties in interest had been completely presented, and without considering or examining the views presented for his examination and consideration by this complainant, but wholly disregarding the same, did, on the 12th day of October, 1897, promulgate a certain projected scheme of decision or award," as the same is characterized in said paragraph. But, on the contrary, these defendants aver, and the record for the said 12th day of October shows and demonstrates, that the said Haupt, in compliance with his duty as chairman of the said commission, did formulate and put in shape the finding for the said commission which he submitted unto the commission for its final action. It was well known to said commission, and unto the said Pena, and unto the representatives of the complainant that the same was the award of the commission. These defendants deny that the said Haupt subsequently attempted to suppress from the minutes of such proceedings any part of the proposed decision or award. They also deny that the said Haupt directed the secretary of the said com-

mission to expunge from the records of the commission any part of the said proposed award with the object of misrepresenting the true course of procedure as charged in the 20th paragraph; and they aver that the said allegations are utterly baseless and have no foundation in fact.

Twenty-first. In answer to the allegations in the 21st paragraph of the bill of complaint contained, these defendants deny that there was any misconduct on the part of the said Haupt as an arbitrator, and they deny that the said Haupt was a partial, unjust and improper arbitrator in the matter. They also deny that any award of the commission to be valid should have been acquiesced in by
889 the said Pena, but that, on the contrary, they aver, as has been before stated, and as the record of the said commission abundantly shows, that the said commission from necessity came to the conclusion, and did conclude, early in its proceedings that its action should be by a majority, and that the complainant was bound thereby, and these defendants were and are bound by said action, even if their representative should fail to acquiesce in the findings.

These defendants aver as a matter of fact that the said Pena had notice of the last meeting, and that he had retired into the office of the counsel of the complainant, to wit, Roderick Robertson. The chairman on the said 22d day of October, 1897, communicated over the telephone with the said Pena and informed him of the sitting of the commission, and the said Pena replied over the telephone that he no longer further considered himself a member of the commission; and that the only reason why the said Pena did not attend the final session of the said commission was because he did not approve of the findings thereof, contrary to his duty in the premises. The complainant and its counsel had full knowledge and notice of said meeting and failed to attend.

Twenty-second. In answer to the allegations in the 22d paragraph of said bill of complaint contained, these defendants say that they deny that the said Haupt and Schramme misconducted themselves, as alleged in the 22d paragraph, in that they as a majority of said commission admitted the oral testimony of the said Schramme, one of the said arbitrators. They state that the testimony of the said Schramme as shown by the records of the commission was taken, and at the time of the taking thereof the counsel for the complainant objected to the reception of the same; *but these defendants aver and so state that prior to the decision of the said commissioners the said commission ruled out and excluded from its deliberations all the testimony of the said Schramme, as will appear from the minutes of the same* (Exhibit 20, page 792). These defendants are advised and aver that there was no impropriety in said Schramme stating under oath any facts within his knowledge, but that if there had been any irregularity in his so doing, *that the proceedings were purged of such irregularity by the exclusion of his statements from the record, in the manner aforesaid.* These defendants submit that with such record in existence, charges of such irregularity are unjustifiable and futile.

Twenty-third. In answer to the allegations in the 23d paragraph of the said bill of complaint contained, these defendants say that

the matters therein contained are matters of law, and that the true intent and meaning of the agreement between the Republic of Colombia and these defendants, executed on the 4th day of
890 January, 1897 (Complainant's Exhibit No. 12), was that the said commission was constituted, as hereinbefore stated, at the instance and demand of the United States Government acting through the Secretaries of State Gresham and Olney, for the purpose of doing justice unto these defendants and the purpose of recompensing them for their losses sustained by the action of the complainant in resuming the concession granted unto the said Cherry and assigned unto these defendants. That under the law passed by the Congress of the complainant (to wit: Complainant's Exhibit No. 11), the authority granted unto the executive or president of the complainant was to "equitably compromise with the grantee of the railroad from Buenaventura to Manizales," or his lawful representatives, the questions or differences that might arise in consequence of the resumption of said concession by the government. Under the basis of November 27, 1896, page 52, Defendants' Exhibit No. 2, and that accepted by the executive of the complainant, for the purpose of reaching the settlement proposed (page 976 Record), an arbitration should take place for the purpose of effecting the "equitable compromise" authorized by the act of the Congress of the complainant (Complainant's Exhibit No. 11). That said commission was given the right under the second article of the agreement constituting the same to award "a just indemnity for all the works constructed by the company during the time the undertaking has been in its charge, and for such rolling stock and other things imported by the company for use on the railway."

By the 3d article of said act of concord it was agreed that the said just indemnity should be the compensation to the company for all its outlay and expenses incurred in the construction of said works, and by the 4th article of the said act the commission was constituted to fix such indemnity. Throughout the said articles of adjustment, the word "indemnity" was used twice in the 5th article and also in the 9th article, and in the 10th article. So that it was stipulated that the defendants were to be indemnified and made whole by said commission for all their outlays connected with the construction of said railway. As early as the 3d session of the said commission (on May 24th, 1897, pages 35 to 39) the scope of such submission was discussed by the said commission, and the chairman, Lewis M. Haupt, submitted unto said commission his finding upon the same, which appears on pages 37, 38 and 39 of said record, and part of the said finding was as follows:

"On this basis your chairman believes, and therefore submits, that the spirit and intent of this agreement should not be limited to the strict technical construction of the words "*trabajos y obras*," since their meaning is modified by the verb "*costear*" (to pay expenses), as well as by that of the term "*indemnizacion;*" but
891 that the Cauca Company should be awarded a sum of money sufficient to compensate them for all legitimate and necessary expenses incurred in the prosecution of the work; such payment

to be made, not as liquidated damages for any liability on the part of either of the high contracting parties, but as full satisfaction for moneys actually invested, the benefits of which must hereafter accrue solely to the Rupublic of Colombia."

These defendants are advised, and so state, that the complainant is bound by and concluded by the action of the commission in the premises. Such was the effect of this action that the said Pena and the said Cisneros sought the advice of counsel upon the subject as to whether they should proceed any further, and after having received the same continued the arbitration (pages 176 to 180, Record, Exhibit No. 19).

Twenty-fourth. In answer to the allegationsin the 24th paragr aph of the said bill of complaint contained, these defendants submit that the position taken by the complainant therein, to wit, that because this defendant, "The Cauca Company," did not have the management and control of the expenditures upon the said railway, but that the defendant, "The Colombian Construction and Improvement Company," did, and for the reason that the agreement of arbitration was made with the "Cauca Company" that therefore these defendants cannot recover, is entirely untenable, and is without basis in law or justice. The complainant very well knew that the said concession was made unto the said Cherry, and was by him assigned unto the "Cauca Company;" that the said "Cauca Company" and the said "The Colombian Construction and Improvement Company" were formed for the purpose of carrying out the said concession, and complying with the requirements thereof, and for the purpose of completing the said works. The Cauca Company held the title to the property and concession, and the Republic of Colombia dealt with that company as the representative of all the parties in interest. The said complainant and its representative, the said Pena, and its executive officers in Bogota, and its counsel, all very well knew of the relations between the said Cherry, the said "Cauca Company" and "The Colombian Construction and Improvement Company." The complainant was well aware with whom it was dealing, and whose property it took possession of, and very well knew to whom it owed the indemnity, which it now refuses. The ownership of the stock of the respective companies is all fully disclosed in the records and the relations of the said companies given in the most minute detail. For the purpose of obviating any minute question as to the identity of the beneficiary, or which precise American citizen was injured, and for the purpose of removing every possible objection, a release by "The Colombian Construction
892 and Improvement Company" was executed. This was in the nature of a quitclaim deed, and filed with the commission, a copy of which is filed with the bill of complaint (Complainant's Exhibit No. 17). So that by the award of said commission justice should be done and the said complainant should be exonerated from all future claims. And these defendants submit that in a matter of international import, the requirements of special pleading are not exacted, but that it is adequate if all the injured parties are com-

pensated, and that a release be made by the same unto the complainant.

These defendants are advised that the allegations in said 24th paragraph of the bill of complaint contained, to wit: "This complainant does not know whether the said defendant The Colombian Construction and Improvement Company pretends to any claim against this complainant by reason of the premises, nor whether or not it claims any right or interest in the said pretended award of the said Haupt and Schramme hereinbefore referred to, but it is advised and believes, and therefore charges, that the said defendant The Colombian Construction and Improvement Company should be required to discover in this cause what, if any, interests or rights it pretends to have in the premises," is not made in good faith; as the complainant is well aware that the parties in interest holding the stock of the "Cauca Company" are the stockholders of "the Colombian Construction and Improvement Company." They have released all their interests to the complainant by the Exhibit No. 17; and payment of the award so made by the commission will be an entire exoneration and discharge of the complainant for all the injuries received by the stockholders of the "Cauca Company" and the stockholders of "the Colombian Construction and Improvement Company."

Twenty-fifth. In answer to the allegations in the 25th paragraph of said bill of complaint contained, these defendants say that it was abundantly proven in the case that large sums of money were expended by the persons interested in the said "Cauca Company" and in the "Colombian Construction and Improvement Company," and that there was no question before the said commission as to which company made the expenditures, but that early in the sessions of the commission, to wit, on the 2d meeting, the claim of the Cauca Company was filed (Exhibit No. 9, pages 947 and 958, Record), Complainant's Exhibit No. 21. The account aggregating the amount of $962,438.74 is there given as "claim of the Cauca Company—expenditures under construction account of the Cauca Company." It was shown in evidence that "the Colombian Construction and Improvement Company" had been organized for the purpose of doing the work of the "Cauca Company," and
893 that these expenditures were made for and on its behalf. That said expenditures, so stated, were made was not disputed. The books of the company were referred unto an expert chosen by the board without the cognizance or knowledge of the defendants, to wit, Edgar S. Barney, who made the report printed in the evidence taken before the commission, to wit, pages 1001 to 1024. No person for and on behalf of the complainant disputed that such outlays had been made, the only dispute that was before said commission was as to what portion of the same came under the terms of the adjustment.

Twenty-sixth. In answer to the allegations in the 26th paragraph of said bill of complaint contained, these defendants answering say, that it is not true, as therein alleged, that the complainant "had no means of knowing at the time of entering into the said agreement

on the 4th day of January, 1897, with the defendant The 'Cauca Company' of the true state of the facts, and that the said Cauca Company had expended no money, and was not pecuniarily interested in the claims for cost of the partial construction of a portion of said railroad." These defendants say that the complainant had full and adequate knowledge that said expenditures were made for and on behalf of the said "Cauca Company" by the manager of the defendant The "Colombian Construction and Improvement Company," the said Cherry. These defendants incurred said expenditures through the said Cherry and the said Schramme. The complainant was well aware of the fact that the said "Cauca Company" represented all the parties engaged in the enterprise, inaugurated under the concession of the said Cherry, and had issued its stock and bonds on the basis of that enterprise and to carry on the same. These defendants deny that there were any false or fraudulent representations made by said Schramme and his associates. They aver that the said complainant very well knew that the said Cauca Company was the representative of all parties concerned, and that the said complainant dealt with the said Cauca Company upon said basis, and all the allegations to the contrary are made by the complainant for the purpose of giving a specious reason for seeking to repudiate its obligations under its contract and the award of the commission.

Twenty-seventh. In answer to the allegations in the 27th paragraph of said bill of complaint contained, these defendants say that the stipulation entered into between these defendants and the complainant and referred to in said paragraph, to wit, on the 31st day of August, 1897 (a copy of a part of the said stipulation being filed with the complainant's bill of complaint and marked Exhibit No. 18, as appears from the minutes of the said commission, pages 762 to 765,
Exhibit No. 20), was made under the following circumstances,
894 and for the objects and purposes specifically stated therein.

The convention or agreement for arbitration provided in the 5th article thereof that the commissioners should "inspect on the ground the works of the railroad and the rolling stock." For the purpose of avoiding the trip from New York to South America, the counsel for the defendants, Marcus Stine, after consultation with the counsel for the complainant, Messrs. Cisneros and Robertson, and also Mr. Pena, stated that it had been agreed upon between them "that if the company would accept the Government's figures as to the cost of construction, and the value or the price of the rolling stock, and the other things which are conceded by the Government to be due to the company—that, then, they would feel inclined to waive that provision of the convention." Such stipulation was entered into at that time under the foregoing circumstances, and for the purpose aforesaid, said stipulations stated merely what was conceded to be by all parties the expenditure for the particular items of construction therein mentioned. The said stipulation was entered upon the minutes in the following manner:

"It is stipulated by the parties to this controversy that in fixing the amount expended by the company upon the following items of

construction work and equipment on and of the Cauca railroad, the commission shall find, in lieu of an appraisement of the items, that said company expended on said items the following sums—that is to say:

Surveys		$22,805 00
Completing road from K. 27,100 to K. 29,750		40,652 58
Completing road from K. 29,750 to K. 36,740		133,546 55
Work beyond San José		15,328 01
		212,332 14
Rolling stock		21,577 00
Making in all		$233,909 14

"This stipulation is without prejudice to any claim or defence of either party relative to any matter not specifically mentioned above."

It was also stipulated at the same time that as the expenses of the operation of the road and revenues of the company about balanced each other, for the purpose of avoiding the necessity of going into these accounts, as follows:

"It is hereby stipulated and agreed that the two items in the account known, first, 'operation and maintenance,' and, second, 'revenue of the railway,' derived from operation, are not to be considered by the commission in determining the questions submitted
895 for their consideration. This stipulation shall be without prejudice of any kind to any claim or defence of either party relative to any other matter." (Pages 764–'5, Record, Complainant's Exhibit No. 20.)

The actions of said parties and the admissions and stipulations aforesaid were intended to save the physical trouble and inconvenience of a voyage to the Republic of Colombia for the purpose of investigating these undisputed amounts. These defendants were not aware, neither were the counsel nor the said commissioners aware, that at the time said agreements were made, and these amounts adjusted that the same precluded the commission from considering any other subjects. It only was conceded, that certain stated amounts were expended for certain specific objects, and it was not stipulated, nor was it intended to be an inference from the same, that said amounts were the *only amounts* for which these defendants were entitled to receive indemnity.

It is undoubtedly a fact that the agreement creating the arbitration commission recited that the complainant had paid the defendants the sum of $200,000, but these defendants deny in the most emphatic manner "that no other expenditures within the terms of the submission to arbitration were shown," as alleged in the said 27th paragraph, nor is it a proper inference of law that an award of an amount greater than a conceded amount renders such award invalid, when the said commission was constituted and appointed for the sole purpose of settling the disputed matters between the parties thereto.

The 10th article in said agreement for arbitration (Exhibit No. 12)

specifically recites that the payment of the said $200,000 was considered by the company (these defendants) to be a sum much less than the just price of the works executed by it. And these defendants submit that in the construction of a railroad, and especially a railroad in South America near the equator, much greater expenses are legitimately incurred than in the mere grading of the same or placing the rails and superstructure thereon.

Twenty-eighth. In answer to the allegations in the 28th paragraph of the bill of complaint contained, these defendants say that the award of the said commission referred to therein, to wit: that the complainant, The Republic of Colombia, should pay unto the Cauca Company, for and on behalf of these defendants, the sum of $452,048.93, in addition to the said $200,000 already paid on account, was a just and proper award within the scope and power of the said commission and properly made by it; and that the award unto the said Marcus Stine of the sum of $10,000 was also a just and proper award, and these defendants deny the allegation in
896 said paragraph that there was no authority to award unto him any sum whatsoever. And these defendants are advised and so state that under the 12th article of said agreement constituting the commission, it was provided that "the expenses of the personnel, mobilization and plant of the commission shall be paid in advance, in equal shares by the company and the government of Colombia, and the commission shall decide whether such expenses are to be charged against one or both of the parties." That under said agreement and under the power vested in the said commission it did from time to time order the payment of various expenses, to wit, for the printing of the records, for the expenses of the clerk, and especially at the instance and upon the motion of the counsel for the complainant (Cisneros) it did on the 10th day of September, at its 29th session, award Lewis M. Haupt the sum of $6,000 for his services as such commissioner. And these defendants aver that the compensation awarded by the said commission unto the said Marcus Stine for his services as counsel in the case is a just, reasonable and proper award within the scope and authority of the said commission, and a usual item in international commissions or arbitrations such as was the one provided for under the proceedings mentioned in this cause.

Twenty-ninth. In answer to the allegations in the 29th paragraph of said bill of complaint contained, these defendants say that they deny that the award of the said commission allowed unto the Cauca Company any sums for compensation for expenses incurred by it which did not come within the scope of the agreement of January 4th, 1897, or which were outside of the same and without their jurisdiction. As to the item of $33,909.14, the same was the difference between the undisputed conceded indebtedness of the complainant and the amount of $200,000 paid by it as hereinbefore recited. Had the jurisdiction of the said commission been limited to an award unto these defendants of an amount conceded by the complainant and offered to be paid by it, to wit, the said sum of $233,909.14, these defendants submit that the necessity of establishing a com-

mission with the high powers vested in it for the purpose of making an adjudication under the circumstances, is not apparent.

These defendants further deny that the said commissioners exceeded their authority in the premises.

Thirtieth. In answer to the allegations in the 30th paragraph of said bill of complaint contained, these defendants say that it is true that the commission did order the stenographic report of its proceedings to be printed, the same has been printed, and that the complainant has filed as exhibits with its bill of complaint the three volumes of testimony and proceedings as its Exhibits Nos. 19, 20 and 21, but these defendants say that the said exhibits are
897 not full and do not contain a complete record of the proceedings of the said commission; that the argument of the said Marcus Stine was filed with the said commission and ordered to be printed, and also the argument of the counsel for the complainant was filed with the commission and ordered to be printed (September 21, 1897), and the said argument of counsel for the complainant contained certain documents which appeared only in his said argument, and these defendants have filed, as hereinbefore stated, the said arguments of counsel and marked the same Defendants' Exhibits Nos. 1 and 2.

The said minutes of the commission so filed by the complainant are incorrect in some respects. Immediately after page 792 and constituting four pages of the third volume there are inserted certain cablegrams between the president of the Republic of Colombia and counsel for complainant, all of which cablegrams were ruled out of the case by the unanimous action of the commission when it struck out of its records the testimony of Commissioner Schramme (see page 792), and the briefs of the respective counsel should appear immediately after page 828 of the official record. Upon the third line of page 799 (Exhibit No. 21) the word "company" should be stricken out and the word "government" inserted; and on pages 911 and 912 the secretary of the commission, Harold R. Miller, has inserted his statement as to the document alleged to have been prepared by the commissioners, to wit, the proposed communication to Secretary of State Sherman at Washington, and the secretary also has inserted: "Mr. Stine, counsel for the company, then instructed the secretary to tear up the shorthand notes of the meeting, &c." The same matter has been heretofore explained, to wit, that what was torn up was not the notes of the meeting, but the uncompleted draft of the proposed communication to the Secretary of State. These defendants further state that the entry on said page 911, "the chairman stated that such meeting was null and void," is not correct. Upon page 1057 of volume 3 of the record, Complainant's Exhibit No. 21, there appears a letter addressed by the secretary of the commission unto Lewis M. Haupt, chairman, which letter was not received by the said Haupt to the information of these defendants until the 3d day of November. These defendants submit that the exhibits filed by the complainant as the proceedings of the commission should be corrected in the foregoing particulars.

Thirty-first. In answer to the allegations in the 31st paragraph of

said bill of complaint contained, these defendants are advised that the award of $452,048.93 is a valid award, duly ascertained by the said commissioners and that the same was within the scope of the authority vested in said commission, and that said complainant is by the terms of its convention bound thereby.

898 Thirty-second. In answer to the allegations in the 32d paragraph of said bill of complaint contained, these defendants say that they are advised that the award of the sum of $108,181.42 as salaries for said Schramme and the said Cherry are valid charges against the said complainant, and that the same were legitimately incurred by these defendants in the construction of the works referred to.

And also these defendants further state that they are advised that the item of $148,164.33 due unto the said Cherry for the price of the concession granted unto him by the said complainant is a due, proper and legitimate charge, and the same constitutes a part of the outlay of these defendants necessary to be incurred in the construction of the said railways, under said concession.

These defendants deny the allegations in the said 32d paragraph of the bill of complaint contained, that the compensation or indemnity to them, was to be restricted solely to the money expended upon physical construction of the portion of the works in the territory of the complainant; that these defendants are advised that the action of the said commission in awarding said amount for the outlay of the defendants in the acquisition of said concession is a due and proper charge. The grant unto the defendants of said concession was registered at Bogota, and the said complainant well knew that these defendants had been subjected to the outlay aforesaid.

These defendants further submit that the legitimate expenses incurred for and on behalf of said defendants by the said Schramme and Cherry in their trips to the Republic of Colombia are proper charges, and that the same were properly allowed; and these defendants deny that the said amount so allowed to said Cherry and Schramme were in the nature of a "bonus" to compensate them for inducing the complainant to execute the convention under which the commission was held. A claim for legitimate traveling expenses was entirely proper.

These defendants are further advised that the allowance by said commission of interest upon bonds of $32,333.40 was a legitimate and proper allowance, and that the same was a proper "construction expenditure," incurred by these defendants with the other items before mentioned, of salaries and price of concession, incurred by these defendants in and about the construction of the said railway.

These defendants deny the allegation in said paragraph contained that the said Haupt and Schramme confederated and combined together for the purpose of making the said award, and that the same was "exaggerated, unconscionable and inequitable," but these defendants, on the contrary, aver that the same was a very moderate award, and that the losses incurred by these defendants in

899 the prosecution of the said work were not fully compensated unto them. And these defendants, in justification of the

moderate amount of the said award state that the same, on the basis of the kilometers so constructed for and on behalf of these defendants, averaged about $37,620.23 per kilometer. This was an amount less than the complainant paid unto its said attorney-in-fact, Francisco J. Cisneros, for the portion of the road constructed by him under his concession in 1885, for which compensation was awarded him by the commission of which the said Pena was a member. The said award was strictly proper upon the basis of the decision of the commission that the -ward should be a sum of money sufficient to compensate the defendants for the legitimate and necessary expenses incurred in the prosecution of such work, and that such payment was not to be in the nature of liquidated damages, but satisfaction for moneys actually invested by the defendants in the construction of an important work which became the property of the complainant.

Thirty-third. These defendants, in answer to the allegations in the 33d paragraph of said bill of complaint contained, say that they deny that the said commission was restricted in its powers to the finding only of the sum of $33,909.14 in addition to the sum of $200,000.00 paid, which said amount was the undisputed amount for certain work and conceded to be due by the government, but always denied by these defendants as the proper amount due unto them.

Thirty-fourth. In answer to the allegations in the 34th paragraph of said bill of complaint contained, these defendants say that it is true that the said commission did file copies of their said award with the Secretary of State of the United States and that they did also send a copy of the same unto the diplomatic representative of the Republic of Colombia at Washington, as was there duty to do under the terms of the arbitration aforesaid. And that the said award constitutes an indebtedness of the complainant duly ascertained by means selected by it, and that the filing of the bill of complaint is an attempt on its part to evade its just liabilities.

Thirty-fifth. Further answering, these defendants say that it would not be possible for this honorable court to fully appreciate the arduous duties assumed by them as the successors of the said James L. Cherry in the construction of the public works provided by the concession made unto him by the complainant in 1890 without an explanation other and further than what appears in the allegations of the bill of complaint. Such contract or concession was granted by the complainant, The Republic of Colombia, through its executive officers, and also through its legislative body after it had
900 already made a contract of a similar nature with the said Francisco J. Cisneros (the counsel of the complainant in the proceedings and its attorney-in-fact before the board of arbitration). Under said contract Cisneros and those associated with him commenced the construction of a railroad from Buenaventura bay on the Pacific ocean towards the town of Cali, which is located on the eastern slope of the Andes mountains. The road was intended to be constructed unto this point, and then to go northerly along the valley of the Cauca river to Manizales in the department of Antioquia. Through physical difficulties, through the lack of labor, and

through the disturbed political condition of the Republic of Colombia, the said Cisneros and those associated with him were not able to complete the construction of this road. Under the arbitration as already mentioned, Manuel H. Pena acting with another, awarded unto the said Francisco J. Cisneros, as is hereinbefore stated the sum of $1,780,000 (page 680 Record, Exhibit No. 20). The said Cisneros had completed about 27 kilometers of railroad in a period of six years and three months. At the time these defendants commenced the work upon said road, this already constructed work had become so dilapidated that it required practically rebuilding. In addition to the construction of the railroad mentioned in the evidence from Buenaventura towards Cali, the grant also vested in these defendants the exclusive right to construct and operate a railway to a port on the Atrato river navigable for vessels of deep draft coming from the Caribbean sea by way of the gulf of Darien, and also to construct a railroad from Cali to the Ecquador line, and also a branch to Popayan, which would constitute a large and important system of railways in the fertile region of the Republic of Colombia. On one of the lines so to be constructed there was a large deposit of coal which could have been put at the port of Panama at a price not exceeding $5 a ton, the market value ruling at that port being in the neighborhood of $15 a ton, and the demand being practically unlimited. The stockholders of these defendants, knowing the valuable features in this concession, were abundantly able to furnish the money necessary to construct this railroad. At pages 970, 971, and 972 appear the proffers from the stockholders and others to this effect in June, 1896. Among these stockholders were individuals and houses of the highest commercial standing and great financial strength—the house of Ladenburg, Thalman & Co. being international bankers of well-known responsibility. The obstacles to its successful construction were those growing out of the climatic conditions, the difficulty of procuring and retaining labor, and the disturbed political condition of the complainant. The valley of the Cauca river lies between the western and the center ranges of the Andes mountain, which traverse Colombia north and south. This valley is about 600
901 miles in length and varies in width to about 100 miles. It is one of the most beautiful and fertile territories to be found in the world. To the west of the western range, lying between it and the Pacific ocean, extends a stretch of zone of an impregnable tropical jungle. In this zone, with the exception of a very few coast towns, there are almost no inhabitants, the nature of the country making living there almost a physical impossibility, the few settlers being along the river's banks, and of mixed blood—mostly negroes. Through this jungle eastwardly from Buenaventura, a distance of nearly forty miles, the Cauca railroad was to be built before it reached the more elevated habitable country. The purpose of this construction being to penetrate from the Pacific coast through a gorge of the Andes to the Cauca valley, from whence it was to be extended north and south. The road through this jungle has been almost entirely completed. The portion of the road from Buenaventura to Cali would have been the outlet of the extensive valley of the Cauca

river, and access would have been given to the Pacific ocean, and the trade and commerce of the country almost indefinitely expanded. Through this tropical jungle clearings were required to be made, grading done and the railroad built. The rainfall in this portion of Colombia aggregates 360 inches in the year. In the United States the average rainfall is about thirty inches. In some seasons of the year it is usual to have a rainfall of from 4 to 8 inches within 24 hours. From the proximity to the equator, and with this volume of rainfall, the vegetation is so rank that it renders the country almost fatal to foreigners. A necessary adjunct to railroad construction in this portion of the Republic of Colombia is a field hospital. It was almost impossible to procure native labor, and the company attempted to import labor from Jamaica by way of Panama, and went to large expense for the purpose in the year 1891. As soon as the men arrived the greater portion of them deserted at once into the interior. After the large and important bridge had been constructed, as referred to in the testimony, it was washed away; it was rebuilt, and a second freshet carried it away; a third time it was placed on the road, and again it was partially destroyed. The same thing happened in the smaller bridges and culverts.

The country produces absolutely nothing in the shape of manufactured articles necessary in the building of a railroad. Every supply was necessarily imported, and if a small piece of machinery was needed, the work had to stop until it was imported by sea. It was not possible for any person to work for more than two weeks in the month, and labor had to be supplied to keep the work in progress. When the concession was first made the popular feeling was very strongly in favor of the defendants as American citizens, and
902 the officials of the Republic, as well as the residents in the Cauca valley, received them with the greatest cordiality. This is shown by the statement of Mr. Pena, the Colombian commissioner (pages 101 and 102, Record, Exhibit No. 19): "The governments of the Republic and of the department looked upon this enterprise as of the utmost importance for the Cauca people, and when the news arrived that a contract had been made with a wealthy, high-standing company it was received with rejoicings, and Mr. Cherry became the recipient of continuous ovations." Mr. Pena recognized in his statement a change from this cordiality to a state of great hostility. There was this strong animosity evidenced by the inhabitants of the Cauca valley against these defendants, and it rendered it almost impossible for them to proceed with their enterprise. A revolution in the politics of the complainant took place while the work was in progress, so that its political condition was unsettled. The animosity against the defendants was shown by the hostile legislation revoking the concession and putting in jeopardy all their investments. It was at this period when the United States intervened, and from this intervention the commission was constituted.

These defendants have answered fully all the allegations in the bill of complaint, and state that they have done so only for the purpose of vindicating said commission and themselves from the charges made in the bill of complaint, and are advised and respectfully sub-

mit that this honorable court is without jurisdiction in the premises to consider and set aside said award, inasmuch as the same was and is in the nature of an international award, of a commission constituted by the said complainant, The Republic of Colombia, in its sovereign capacity through an act of its congress, passed for the purpose of adjusting the claims made by the United States through its Secretary of State and its diplomatic channels. Said award should not be considered or disturbed by this court, when the said complainant does not fully submit itself unto the jurisdiction of this honorable court, and does not tender itself ready and willing to perform any decree which may be passed in this cause by this honorable court, but invokes its jurisdiction solely for the purpose of impugning the motives and discrediting the actions of the honorable members of the said board selected as aforesaid, so as to leave these defendants wholly without remedy to obtain compensation for their property taken from them unjustly by the complainant.

These defendants deny that there is any other matter, cause or thing in said complainant's said bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge and belief of these
903 defendants; all which matters and things these defendants are ready and willing to aver, maintain and prove as this honorable court shall direct; and they pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

THE CAUCA COMPANY,
(Signed) By HENRY A. RICHARDSON, *President.*

[Seal of Cauca Company.]

Attest:
(Signed) H. R. DE MILT, *Treasurer.*

THE COLOMBIAN CONSTRUCTION AND IMPROVEMENT COMPANY,
(Signed) By HENRY A. RICHARDSON, *President.*

[Seal of Colombian Construction & Improvement Company.]

Attest: E. H. KELLOGG, *Treasurer.*

(Signed) COWEN, CROSS & BOND,
Solicitors for Defendants.

STATE OF NEW YORK, } *To wit:*
City and County of New York, }

I hereby certify that on this fourth day of March, in the year 1898, before me the subscriber, a notary public of said State of New York, in and for the city and county of New York, aforesaid, personally appeared Henry A. Richardson, to me personally known, who made oath in due form of law that he is the president of the defendant, The "Cauca Company;" that he has read the foregoing answer to the bill of complainant, and that the matters and things stated therein are true to the best of his knowledge, information and belief.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and the year above written

(Signed) H. MELVILLE WALKER,
[SEAL NOTARY.] *Notary Public, No. 99, New York Co.*

STATE OF NEW YORK, }
City and County of New York, } *To wit:*

I hereby certify that on this fourth day of March, in the year 1898, before me the subscriber, a notary public of said State of New York, in and for the city and county of New York aforesaid, personally appeared Henry A. Richardson, to me personally known,
904 who made oath in due form of law that he is the president of the defendant, "The Colombian Construction and Improvement Company;" that he has read the foregoing answer to the bill of complaint, and that the matters and things stated therein are true to the best of his knowledge, information and belief.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and the year above written.

(Signed) H. MELVILLE WALKER,
[SEAL NOTARY] *Notary Public, New York Co.*

* * * * * * *

1079 *Order of Court.*

In the Circuit Court of the United States for the District of West Virginia.

THE REPUBLIC OF COLOMBIA, Complainant,
vs.
THE CAUCA COMPANY and THE COLOMBIAN CONSTRUCTION & IMPROVEMENT COMPANY, Defendants. } In Equity.

The motion of the defendants in the foregoing cause, The
1080 Cauca Company and The Colombian Construction & Improvement Company, for leave to file a cross-bill in said cause against The Republic of Colombia, having come on to be heard and counsel for the Republic of Colombia not objecting, it is, this 8th day of June, 1898, ordered by the court that the said Cauca Company and the Colombian Construction and Improvement Company have the leave prayed to file the cross-bill tendered with said motion.

Counsel for the Republic of Colombia in open court having stated that they were authorized and ready to appear and file an answer to the cross-bill tendered, further order on the said motion is denied.

(Signed) NATHAN GOFF,
U. S. Circuit Judge.

June 8th, 1898.

In the Circuit Court of the U. S. for the District of West Virginia.
In Equity.

THE CAUCA COMPANY and THE COLOMBIAN CONSTRUCTION AND Improvement Company, Complainants,
vs.
THE REPUBLIC OF COLOMBIA, Defendant.

Cross-bill and Motion for Leave of Court to File the Same.

COWEN, CROSS & BOND,
Solicitors for Complainants.

JOHN W. BEAUMONT,
EDWARD H. MURPHY,
E. J. D. CROSS,
HUGH L. BOND, JR.,
Of Counsel.

In the Circuit Court of the U. S. for the District of West Virginia.
In Equity.

THE CAUCA COMPANY and THE COLOMBIAN CONSTRUCTION AND Improvement Company, Complainants,
vs.
THE REPUBLIC OF COLOMBIA, Defendant.

Cross-bill.

The Cauca Company and The Colombian Construction and
1081 Improvement Company, corporations duly formed under the laws of the State of West Virginia, as hereinafter mentioned, with leave of this honorable court, duly had and obtained, file this, their cross-bill, against The Republic of Colombia, a foreign State, now a litigant in this honorable court, and thereupon your orators complaining show:—

First. That there is pending in this honorable court the bill of complaint of the said Republic of Colombia, as complainant, against the said Cauca Company and the said Colombian Construction and Improvement Company, as defendants, which was filed on or about the 17th day of December, 1897. That the said bill of complaint asks this honorable court to set aside a certain award made on the 22nd day of October, 1897, by the commission of arbitration, appointed by the Republic of Colombia and this defendant, The Cauca Company, which said award grew out of the transactions and dealings of these complainants with the said Republic of Colombia in the construction by them of a certain railway located in the Republic of Colombia, running from Buenaventura towards the city of Manizales. By which said award it was adjudged by the said commission of arbitration that the said Republic of Colombia should pay unto your orator, The Cauca Company, the sum of $452,048.93 on or before the 26th day of January, 1898, in gold coin of the United States of America, as will more fully appear by a copy of

said award filed with said bill of complaint of the said Republic of Colombia and marked "Exhibit No. 16."

Your orators further state that this honorable court has issued a temporary restraining order prohibiting these complainants from enforcing the said award until the further order of this court.

Your complainants further state that on or about the 7th day of March, 1898, they duly filed their full answer unto the said bill of complaint, to which said answer the said complainant did, on or about the 2nd day of April, 1898, file certain exceptions; and the said litigation between the said Republic of Colombia and these complainants is now pending and undetermined in this honorable court.

Second. Your orators further state that on or about the 27th day of August, 1890, the said Republic of Colombia was the owner of a certain railroad, which commenced at Buenaventura and ran eastwardly towards the said city of Manizales, which was uncompleted, and that the entire property required re-
1082 pairs and reconstruction to permit the same to be efficiently operated. That on or about the 27th day of August, 1890, a certain James L. Cherry entered into a certain contract with the said Republic of Colombia, through its authorized public officials, a copy of which contract is filed with the bill of complaint of the said Republic of Colombia in said cause as "Exhibit No. 4," which stated the terms and conditions under which the said Cherry agreed to repair the then existing railroad and construct a railroad as mentioned in said contract, which was known as the Cauca railway. By said concession the said Cherry and his assigns became the owners of said railway then and thereafter constructed, as will more fully appear from said concession, "Exhibit No. 4." That for the purpose of carrying out the true intent and purpose of said contract, the complainant The Cauca Company, was incorporated under the laws of the State of West Virginia on or about the 29th day of November, 1890; and your orator, the said Colombian Construction and Improvement Company, was duly incorporated by said State of West Virginia on or about the 29th day of November, 1890, as will more fully appear by duly certified copies of said articles of incorporation filed by the said Republic of Colombia with its bill of complaint, the same being "Exhibits Nos. 5 and 6," respectively. That the Cauca Company and the said Colombian Construction and Improvement Company received an assignment of the said contract or concession from the said James L. Cherry on or about the 29th day of November, 1890, copies of which said contracts are filed with the said original bill of complaint of the said Republic of Colombia as "Exhibits Nos. 7 and 8," respectively.

That by the said agreements between the said James L. Cherry and the said complainants, the said Cauca Company received an assignment of all the rights, title an- interest of the said James L. Cherry in the said contract or concession entered into between him and the Republic of Colombia, known as contract 20 of the 27th day of August, 1890, together with all the rights and privileges of

the said concession granted unto the said Cherry, and that the said Cauca Company agreed to perform the said contract; and the said James L. Cherry also assigned unto the Colombian Construction and Improvement Company all his right, title and interest in the contract entered into between him and the Cauca Company, as will more fully appear by reference unto said "Exhibits Nos. 7 and 8."

Third. That after the said assignments were made of said concession unto your orators, they commenced in good faith within
1083 a period of four months from the said 27th day of August, 1890, to repair the existing railroad, and to make the preliminary and other surveys for the new road so to be constructed, and they provided a large amount of supplies for such purpose, such as rails, materials and rolling stock and equipment, and had completed the said railway unto San Jose, a distance of 36.740 kilometers from Buenaventura, and had under construction and partly completed an additional distance of 7 kilometers, the construction of the said railroad (as fully detailed in their said answer filed in said original suit) until the said Republic of Colombia interrupted the same by the passage of a decree on or about the 16th day of November, 1894, wherein the said government declared lapsed the said contract of the said 27th day of August, 1890, and attempted thereby to forfeit the said contract and to deprive your orators of their property rights in the same, and in the railroad so constructed and being constructed.

As soon as the said act of forfeiture was passed and attempted to be put in force, the Government of the United States, through its minister to the Republic of Colombia, the Hon. Luther F. McKinney, intervened to protect the rights of your orators as American citizens. The action of the said United States Minister McKinney was taken at the instance and request of the Secretary of State, the late Hon. Walter Q. Gresham, and also the Secretary of State, Hon. Richard Olney, who instructed the said American minister to intervene and protect your orators and their property from its attempted forfeiture by the said Republic of Colombia. That in consequence of the action of the said United States Government, through its minister, the said Republic of Colombia, on or about the 19th day of October, 1896, passed a law by which it was provided that the executive of the said Republic of Colombia was fully empowered to equitably adjust and compromise with your orators all questions or differences that had arisen in consequence of the attempt of the said Republic of Colombia to forfeit the said concession of August 27th, 1890. That a condition of such settlement was required to be the renunciation by your orators of their rights to the franchise granted to construct the said railroad, and also the delivery of so much of said railroad as had already been constructed, and all its rolling stock, etc., unto the said Republic of Colombia; and it was further provided that a tribunal should be constituted to ascertain as a commission of arbitration the amount which was to be paid by the said Republic of Colombia unto your orators for their interest in
1084 the said railroad and its rolling stock and appurtenances, which said law of the Republic of Colombia is filed by it with

its original bill of complaint as "Exhibit No. 11." That in pursuance of the act aforesaid the said Republic of Colombia did, on or about the 4th day of January, 1897, execute an agreement for the submission to arbitration of the price payable to your orator, the said Cauca Company, by the said Republic of Colombia, which said agreement for the constitution of a commission of arbitration for said purpose is filed with the bill of complaint of the said Republic of Colombia as "Exhibit No. 12," to which reference is made. It was stipulated thereunder between the said Republic of Colombia, acting through its executive, and your complainant, the said Cauca Company, that under the fourth article thereof a special commission was to be constituted to consist of three members, one of whom was to be named by the secretary of the treasury of Colombia, another by said Cherry as attorney-in-fact of your orator, the said Cauca Company, and the third was to be agreed upon by the Secretary of State of the United States of America and the minister of Colombia at Washington.

By the second article of said convention it was agreed as follows: "The company surrenders absolutely the concession to which article I of the contract, approved by law 16 of the year 1890, relates, and, within fifteen days next following the day on which this agreement shall be approved, shall deliver to the government of Colombia the Cauca railway with all its fixed plant, rolling stock on hand, *words* (works), buildings, tools, utensils of all kinds, appurtenances, etc., etc. In consideration, therefor, the government of Colombia is to pay to the company a just indemnity for all the works constructed by the company during the time the undertaking has been in its charge, and for such rolling stock and other things imported by the company for use on the railway, and which are now in existence."

By the third article of said agreement of January 4th, 1897, it was provided that "the government of Colombia and the company (the Cauca Company) accept in advance as the just and only indemity a sum which shall be the equivalent of what the company shall prove it has expended on the works executed by it in the construction of the said railway and for rolling stock, tools, etc., etc., imported for use on such railway."

By the tenth article of said agreement the said Republic of
1085 Colombia paid unto the said Cherry, the attorney-in-fact of your orator, the sum of $200,000 in gold, which was specifically stated to be "on account" of such amount of indemnity as the said arbitration commission, so to be constituted, might fix, and the said complainant covenanted and agreed that in the event that the said commission should award unto these defendants any greater amount than the sum of $200,000 that the complainant was "to pay the excess at such time, in such manner and on such terms as may be determined by the commission," which said payment of $200,000 under the said tenth article of the said agreement of arbitration was recited to be a sum much less than the company considered due or as the just price of the works executed by it, but said payment was made "for the purpose of obtaining the immediate delivery of the

railway, in conformity with the last part of article I of law 41 of 1896 (Exhibit 11)," and also as a payment on account of the amount of indemnity to be fixed by the said commission.

The sixth article of said agreement of arbitration provided as follows:—

"Should any of the members of the commission decline or resign from the position, or for any reason cease to act, the proceedings of the commission shall not thereby be invalidated, but the commission shall be restored by a new appointment, which is to be made by the party who appointed the member who fails to act, within thirty days, counting from the day on which such failure to act shall occur. If such party shall not comply with such obligation, the Secretary of State, of the United States of America, and the minister of Colombia at Washington shall proceed by agreement to appoint the person to fill such vacancy."

Fourth. Under the terms of said agreement of arbitration the said Republic of Colombia did, on or about the 11th day of January, 1897, appoint as its said representative Senor Manuel H. Pena, and as its attorney-in-fact it appointed Francisco J. Cisneros to represent the said Republic of Colombia before the said commission; and your orator, the said Cauca Company, appointed Christian F. Schramme as its representative; and the third member of said commission, Lewis M. Haupt, was appointed by the joint action of the Hon. John Sherman, the Secretary of State of the United States, and Senor Julio Rengifo, charge d'affaires of the Republic of Colombia at Washington. The said appointments appear by the Exhibits Nos. 13, 14 and 15, filed by the complainant with its original bill of complaint.

1086 The said Schramme was appointed on January 5th, 1897, and the — Lewis M. Haupt was appointed on the 18th day of March, 1897.

That, relying upon the good faith of said Republic of Colombia, and in pursuance of said agreement of January 4th, 1897, the railway and property was surrendered and delivered up, and said Republic of Colombia took possession of the same on or about the 27th day of January, 1897.

The said arbitration commission commenced to perform its duties on or about the third day of April, 1897, and it was allowed by the eighth article of said agreement of arbitration a period of 150 days, commencing with its installation, within which time it should transact the business imposed upon it, which said time would have expired on the 30th day of August, 1897. The said arbitration commission had the authority to extend its period of time for 60 days more in case a justifiable ground for delay should arise. It exercised this authority, and extended said time for 60 days at its 27th meeting, on August 30th, 1897.

Your orators aver that the said commission commenced to hold its sessions on or about the 3d day of April, 1897, and continued in session at various periods until the 22nd of October, 1897; that it held thirty-six meetings, and heard a very large mass of testimony, which was submitted by your orators and by the said Republic of Colombia; and it also heard full and elaborate arguments by coun-

sel for the respective parties, and proofs were filed before it; all of which appears from the proceedings of the said arbitration commission, filed by the complainant with its bill of complaint, and marked "Exhibits Nos. 19, 20 and 21."

The briefs of counsel for the respective parties were filed by these complainants with their answer unto the said original bill of complaint of the said Republic of Colombia, and were marked Defendants' Exhibits, Briefs Nos. 1 and 2, which said briefs were part of the record in said original case.

By the fifth article of said agreement of submission to arbitration the said board of arbitrators were clothed with judicial powers. They had the right to examine witnesses, to appoint experts, to consider proofs which should be presented before them, to fix the indemnity to be awarded unto your orators, and also had the specific power given them to "determine the procedure to be followed in the exercise of the powers conferred upon it, both as to its own acts as well as to the proceedings of the parties themselves." The
1087 said commission of arbitration, at its second meeting, determined by unanimous vote that all its decisions should be by a majority vote (see p. 11, volume I, Record of Commission). The form of procedure was also adopted by the said commission (see p. 33, Record, vol. I).

Fifth. Your orators aver and charge that when the said commission had reached its thirty-fifth session, on the 22nd day of October, 1897, it had consumed under the terms of its constitution a period of 203 days, and that there was remaining of the time limited unto the said commission for its existence only the period of seven days; that at the date of the 35th session, on the said 22nd day of October, 1897, it had substantially completed its work, had formulated its finding, and had agreed upon the result; and that the amounts of the various items claimed by your orator, The Cauca Company, to be due unto it under the terms of said submission to arbitration had all been determined, adjusted and agreed upon by a majority vote of said commission. That at date of the 34th session, held on the 19th day of October, 1897, all the members of the commission were present, to wit: Lewis M. Haupt, who was chairman; Manuel H. Pena and Christian F. Schramme. That at the said 34th session the said commission had passed upon every matter and thing, proper and pertinent to their award, and all that remained was to formulate the same and to draft the finding and authenticate the same; and that on the said 22nd day of October, 1897, when under the terms of its adjournment the work of said arbitration commission was to be formally completed, the said Manuel H. Pena addressed a letter unto the said commission, enclosing a translation of a letter which he stated he had sent unto the minister of hacienda, at Bogota, containing the alleged resignation of the said Pena as a member of the arbitration commission, which said letter and the enclosure are found on pp. 907–'8, 3rd volume, Record of Commission; and the said Francisco J. Cisneros, the attorney-in-fact of the said Republic of Colombia, also addressed a letter withdrawing from the said arbitration proceedings, and stated that by such withdrawal of the

representative of the Republic of Colombia the commission had ceased to have any existence. The said letter from the said Pena, with the translation of the letter transmitted by him unto the minister of the Republic of Colombia, and the letter of the said Francisco J. Cisneros, are as follows:—

1088 OCTOBER 22ND, 1897.

To the secretary of the Colombia-Cauca Co. arbitration commission, Clarendon hotel, city.

DEAR SIR: I beg to enclose you translation of a letter I have this day addressed to H. E. the minister of hacienda at Bogota, containing my resignation as a member of this arbitration commission, which resignation, of course, takes effect from this date.

I shall esteem it a favor if you will kindly place the same before my honorable colleagues at your next meeting.

Yours truly, MANUEL H. PENA.

(*Translation.*)

OCTOBER 22ND, 1897.

To his excellency the minister of hacienda, Bogota, Republic of Colombia:

In view of the fact that Lewis M. Haupt and Christian F. Schramme, both appointed as members of the commission created pursuant to the convention of January 4, 1897, to decide the controversy between the Cauca Company and the Republic of Colombia relative to the Cauca Co. railway, have declared their intention to allow the Cauca Company very large amounts of money for alleged expenditures of the company, having no relation to either the construction expenses of the company or the purchase of material on the construction of said Cauca railway, or for use thereon, and whereas the said commission has not, and never had, jurisdiction to pass upon or allow such expenditures; and, whereas, in my judgment, said commission have departed from the terms of said convention and propose to act in the matter of said controversy in a manner wholly beyond their official power as such commissioners, and to make an award upon matters which the parties to said controversy never intended to submit to their decision; and, whereas, under the said circumstances, I am convinced that it is my solemn duty to refuse to act further with such commissioners, and to decline to remain a member of such commission until the alleged intentions of said commissioners shall have been carried out by the making on their part of a pretended award upon matters not submitted to said commission.

1089 I therefore beg to say that I hereby resign as a member of said commission, such resignation to take effect at the moment of my signature hereto.

Dated at New York city, this day, 22nd of October, 1897.

(The secretary then handed the chairman a letter addressed jointly to himself and Mr. Schramme by Mr. Cisneros, of which the following is a copy:)

NEW YORK, *October 22nd*, 1897.

Messrs. Lewis M. Haupt & Christian F. Schramme.

GENTLEMEN: Being informed by Mr. Manuel H. Pena that he has resigned his office of commissioner in the matter of the arbitration of the controversy between the Cauca Company and the Republic of Colombia, I desire, on behalf of the said Republic of Colombia, to say that such resignation on the part of Mr. Pena has destroyed the autonomy of the commission of which you and he were members, and that under such circumstances no further act on your part can have any force or effect as an official act on behalf of such commission or as an official act of a commissioner in said matter

Yours very faithfully, F. J. CISNEROS.

The said commission, not recognizing the withdrawal of the said Pena and the said Cisneros as legal and proper, proceeded, on the said 22nd day of October, 1897, to complete with due formalities its award, and filed the same with the Hon. John Sherman, the Secretary of State of the United States, wherein, as hereinbefore stated, the sum of $452,048.93, the items of which had been ascertained and awarded at prior meetings by a majority vote (the said Pena voting thereon), was awarded unto your orator, the said Cauca Company, as the amount due to it by the said Republic of Colombia under the said submission to arbitration and convention (in addition to the sum of $200,000 paid on account as hereinbefore stated), and as the sum to which it was entitled under said convention as indemnity to it for the railway, rolling stock and property which had been transferred unto the Republic of Colombia under the said agreement of January 4th, 1897.

It was provided by the ninth article of said agreement of submission to arbitration that the decision of such commission should be final and conclusive, and there should be no appeal from the
1090 same, and the amount of the indemnity fixed by the said commission should be payable unto the company at such date as said commission should fix; and said commission did ascertain the amount as hereinabove stated, and did fix the date on January 26th, 1898, as the time when the said Republic of Colombia should pay such duly ascertained amount unto your orator, the said Cauca Company.

Sixth. Your orators further aver that the resignation of the said Pena was intended to frustrate the purpose for which said commission of arbitration was constituted, and that the same was not made in good faith and is wholly without any virtue or effect for said purpose, neither at the time of the presentation of such resignation nor at any time since was any offer made by the said Republic of Colombia under the terms of the said submission to appoint another representative, as provided under the sixth article thereof; it being a physical impossibility for the letter of resignation of said Pena to have been received by the minister of the interior at Bogota within the seven days remaining of the time allowed for said commission of arbitration to act. Your orators, in their answer unto the said

original bill of complaint of the said Republic of Colombia, in the fifteenth clause thereof, have averred as follows:

"These defendants do not know whether said action of said Pena in so resigning after the said commission had reached a definite result was done by the order or 'with the knowledge of the complainant,' but these defendants are advised and so charge that the said resignation took place with the knowledge and assent of the diplomatic representative of the complainant at Washington, to wit: the said Julio Rengifo, charge d'affaires, and was assented to by him, with the intent if possible to make null and void the action of his government and of the United States Government, and the concurrence of the parties hereto for the purpose of a definite ascertainment of the rights of these defendants. These defendants ask for a full discovery of the knowledge of the said agent of the complainant upon these subjects; and for the production of the telegrams and letters which passed between them upon such proposed resignation."

And your orators further aver that at the date when the said answer of your orators was filed, to wit: the 7th day of March, 1898, Lewis M. Haupt, the arbitrator, appointed by the joint action of the Republic of Colombia and your orators, through the concurrence of the Hon. John Sherman, as Secretary of State of the United States, and the representative of the Republic of Colombia at Washington, was absent from the country, having been appointed
1091 by the President of the United States as a member of the commission to investigate the propriety of the construction of the Nicaragua canal; and that since said answer of your orators was filed on the said 7th day of March, 1898, the said Lewis M. Haupt has returned unto this country, and that the said Lewis M. Haupt has informed your orators that in the early part of the month of July, 1897, while the said arbitration was pending, that the said Cisneros informed (the said Haupt) that he (said Francisco J. Cisneros), who was then acting as the attorney-in-fact, and agent and counsel of the Republic of Colombia, with the assent and knowledge of Pena, had sent unto the minister of the interior of the Republic of Colombia, to wit: Senor Manuel Esguerra, a cablegram of which the following is a translation:

"NEW YORK, *July* 1*st*, 1897.

Ministro hacienda, Bogota:

Commission has decided against opinion of Pena, that convention fourth January authorizes other expenses abroad besides those of local construction. Schramme sustains that this was agreed so with government. Renowned counsel advise Pena to resign and I to retire the government, should commission insist on considering all the losses of the company. Please send precise instructions, and in case of instructing our withdrawal it will be necessary that minister at Washington should not accept substitute. This would give rise to the formation of a new convention.

CISNEROS."

To which said cablegram the said Cisneros received the following answer from the said minister of the interior of the said Republic of Colombia :—

(Through the Colombian consul.)

"BOGOTA, *5th July*, 1897.

If commission condemns government to pay losses of the company or other things over and above construction expenses, government will not accept decision, inasmuch as it would be openly violating the perfectly clear convention of 4th January. Please inform Cisneros in order that he may notify commission.

ESGUERRA."

1092 And your orators aver that the sending of the said cablegram on the said first day of July, 1897, by the said Cisneros, who was the duly appointed attorney-in-fact and representative of the Republic of Colombia before said arbitration commission, was a scheme on his part in combination with the said Pena and with the responsible executive officer of the complainant to defeat said arbitration in the event that the same should be unfavorable unto the said Republic of Colombia by arranging for the resignation of the said Pena and the retirement of the said Cisneros as the representatives of the said government, as also arranging that in the event of such withdrawal that the minister or representative of the said Republic of Colombia at Washington should not appoint a successor unto such resigning member and should not concur with the Secretary of State of the United States in the appointment of a person to fill such vacancy, as provided in the sixth article of the said agreement of arbitration of date January 4th, 1897.

Your orators are advised and so state that said scheme so arranged between the agent or attorney-in-fact and counsel of the Republic of Colombia and the said arbitrator Pena, and the said secretary of the interior of the said Republic of Colombia, was in derogation of the said submission to arbitration so brought about by the minister of the United States Government, authorized by the Republic of Colombia and assented to by your orators, and that the pretended resignation of the said Pena was not an act of good faith, and that the conduct of the said Pena in so attempting to resign after sitting upon said commission from the said 5th day of July, 1897, until the 19th day of October, 1897, when it had been already agreed upon between him and the said Republic of Colombia, acting through its minister, that in the event of an unacceptable award having been made against the said Republic of Colombia, that he should resign and thereby attempt to frustrate the purpose of said submission to arbitration, was part of the inequitable scheme to deprive your orators of their just rights.

And your orators are further*ed* advised that such action so agreed upon beforehand and attempted to be consummated on the said 22nd day of October, 1897, when the award was ready to be made, did not have the effect of destroying "the autonomy of the commission" as it was intended to do, as stated by the said Cisneros in his letter of the said 22nd day of October, 1897, unto the said commission.

And your orators are further advised and state that they are informed that in furtherance of said scheme so to attempt to
1093 destroy the said commission of arbitration, the said Manuel H. Pena did on or about the said 19th day of October, 1897, proceed to the city of Washington and there saw the said Julio Rengifo, charge d'affaires of the said Republic of Colombia, and thereupon consulted and agreed with him that in furtherance of said scheme that the proposed resignation of the said Pena should take place, and that the said Julio Rengifo agreed with said purpose and was cognizant thereof and assented thereto; and that the resignation of the said Pena was the result of the said agreement between the aforementioned officials and representatives of the Republic of Colombia that if possible said arbitration should be rendered null and void as the result of said proposed course of action.

Seventh. Your orators further state and aver that under the said agreement of January 4th, 1897, they, relying upon the good faith of the said Republic of Colombia, did on the 27th day of January, 1897, deliver unto its representatives the railway constructed from said Buenaventura towards the city of Manizales, as hereinbefore mentioned, together with the rolling stock and appurtenances, and that the said Republic of Colombia at the time of the delivery unto it entered into the possession of the same and has exercised acts of ownership over the same and has received the revenues and profits thereof. That the surrender of the said railway and its equipment was made by your orator, the said Cauca Company, relying upon the performance by the Republic of Colombia of the contract entered into between the said Republic of Colombia and the said Cauca Company, whereby the said government of Colombia was to comply with the said agreement of arbitration and to pay unto your complainant, your orator, the said Cauca Company, such amount of money as should be found due unto it by the said commission of arbitration; and that the said action of the said Republic of Colombia in remaining in possession of the said railway and equipment and property so turned over to it under the circumstances aforesaid, and its refusal to abide by and perform the findings of the said commission of arbitration, is grossly oppressive and unjust unto your orators; and that it is impossible to restore your orators to the condition in which they were when the said railway was so surrendered by the said Cauca Company unto the said Republic of Colombia.

Eighth. Your orators are further advised that by reason of the filing of the bill of complaint of the said Republic of Colombia in the honorable court on the said 17th day of December, 1897, the said Republic of Colombia submitted itself unto the jurisdic-
1094 tion of this honorable court, and that this honorable court has full jurisdiction in the premises to make such orders or decrees as may be necessary and proper for the doing of complete and entire justice between the said Republic of Colombia and your orators in all matters and things covered by the agreement of date January 4th, 1897, and the enforcement of the award so duly made by the arbitration commission constituted under the said agree-

ment; and that the honorable court has full jurisdiction to decree the specific performance of said agreement by the said Republic of Colombia by ordering the payment of the award so made.

Your orators are further advised that as they have performed all the matters and things required to be done by them under the said agreement of January 4th, 1897, and as they have surrendered unto the said Republic of Colombia the said Cauca railway, with its fixed plant, rolling stock, buildings, tools, utensils of all kinds and the appurtenances thereof, they are entitled to receive from the said Republic of Colombia in these proceedings the said sum of $452,048.93, in gold coin of the United States of America, with interest thereon at the rate of six per cent. per annum from the said 26th day of January, 1898.

Your orators are further advised that full justice cannot be done in the premises unless the said Republic of Colombia be required to abide by and perform such decree as may be passed by this honorable court, and that under the well-established rules of international law and the administration of equity the said Republic of Colombia cannot have or maintain further its said bill of complaint against your said orators unless it shall formally subject itself unto the jurisdiction of this honorable court, and unless it shall designate some person as representing it upon whom this cross-bill shall be served for the purpose of enabling this court to do full justice in the premises; and unless it shall designate some duly authorized person within the jurisdiction of this honorable court upon whom such orders as may be passed from time to time shall be served in the progress of this cause.

To the end, therefere, that your orators may have that relief which they can only obtain in a court of equity, and that the said Republic of Colombia through its said duly authorized representative may answer the premises and may make full discovery of all its actions and doings in the premises in relation to the said resignation of the said Pena and the design to thereby frustrate said arbitration, your orators pray:

1. That they may have leave of this honorable court to file this their cross-bill in said proceedings.

1095 2. That the said Republic of Colombia be required to designate some attorney-in-fact or representative within the jurisdiction of this honorable court with authority to such attorney-in-fact or representative to accept service of such process or orders as may be necessary for the exercise of the full jurisdiction of this court.

3. That the said Republic of Colombia, through its duly authorized attorney-in-fact or representative, shall make full discovery under oath as to all the allegations set forth in the fifth and sixth paragraphs of this cross-bill as fully as if the same were restated herein, and the said Republic of Colombia were thereto specifically interrogated; and that full discovery shall be made of the actings and doings of the aforementioned representatives and agents of the said Republic of Colombia, to wit: Francisco J. Cisneros and Manuel H. Pena, of the circumstances of the transmission by the said Cisneros of the cablegram of date of July 1st, 1897, hereinbefore referred

to, and also make full discovery of the circumstances of the transmission of the answer of its minister of the interior, Senor Manuel Esguerra, of the 5th day of July, 1897; and also make full discovery of any and all cablegrams, letters or communications which may have passed between the ministers or representatives of the said Republic of Colombia and the said Cisneros or Pena in regard to the resignation of the said Pena so proposed to be made for the purpose of attempting to destroy the commission of arbitration constituted as in this cross-bill alleged, and further that full discovery may likewise be made of the actings and doings of and between the said Manuel H. Pena and the said Julio Rengifo prior to the said 22nd day of October, 1897, in regard to the contemplated resignation of the said Pena for the purposes aforesaid; and also that the originals or copies of said cablegrams, letters or communications between the said parties may be produced and filed.

4. That your orators may have a decree for the specific performance by the said Republic of Colombia of the said agreement of date January 4th, 1897, and for the payment of the award so made by the said arbitration commission on the said 22d day of October, 1897, and that the said Republic of Colombia may be decreed to specifically perform the same and to pay the said sum of money, to wit: the sum of $452,048.93 in gold coin of the United States of America, with interest thereon from the date when the same was due and payable, to wit: the 26th day of January, 1898, and that the same may be paid unto your orator, the said Cauca Company.

1096 5. That your orators may have such other further and general relief as the nature of their case may require, and as to this honorable court shall seem meet and proper.

6. May it please your honor to grant unto your orators the writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court and directed to The Republic of Colombia, the defendant herein, therein and thereby commanding it on a certain day to be therein named and under a certain penalty, to be and appear before this honorable court then and there to answer all and singular the premises, and to stand to, perform and abide by such order, direction or decree as may be made against it in the premises, and as is meet and agreeable to equity and good conscience.

And your orators as in duty bound will ever pray, &c.

THE CAUCA COMPANY,
(Signed) By HENRY A. RICHARDSON, *President.*

Attest:
(Signed) HENRY R. DERWITT, *Treasurer.* [SEAL.]

THE COLOMBIAN CONSTRUCTION AND IMPROVEMENT COMPANY,
By HENRY A. RICHARDSON, *President.*

Attest:
(Signed) E. H. KELLOGG, *Treasurer.* [SEAL.]

COWEN, CROSS & BOND,
EDWARD H. MURPHY, *Of Counsel.*

STATE OF NEW YORK, } *To wit:*
City and County of New York, }

I hereby certify that on this sixth day of June, in the year 1898, before me the subscriber, a notary public of said State of New York, in and for the city and county of New York aforesaid, personally appeared Henry A. Richardson, to me personally known, who made oath in due form of law that he is the president of the complainant, The "Cauca Company," that he has read the foregoing cross-bill of complaint, and that the matters and things
1097 stated therein are true to the best of his knowledge, information and belief.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year above written.

T. LLOYD McCONCHIE,
[L. S.] *Notary Public, N. Y. Co.*

STATE OF NEW YORK, } *To wit:*
City and County of New York, }

I hereby certify that on this sixth day of June, in the year 1898, before me, the subscriber, a notary public of said State of New York, in and for the city and county of New York aforesaid, personally appeared Henry A. Richardson, to me personally known, who made oath in due form of law that he is the president of the complainant, "The Colombian Construction and Improvement Company;" that he has read the foregoing cross-bill of complaint, and that the matters and things stated therein are true to the best of his knowledge, information and belief.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and the year above written.

(Signed) T. LLOYD McCONCHIE,
[L. S.] *Notary Public, N. Y. Co.*

In the Circuit Court of the United States for the District of West Virginia, in Equity, at Clarksburg.

THE CAUCA COMPANY and THE COLOMBIAN CONSTRUCTION AND IMPROVEMENT —, Complainants,
vs.
THE REPUBLIC OF COLOMBIA, Defendant.

Answer to Cross-bill, with Exhibits.

Before the Honorable Nathan Goff.

Calderon Carlisle, William G. Johnson, solicitors for complainant-; Edwin Maxwell, of counsel.

Filed 8th day of June, 1898.

L. B. DELLICKER,
Clerk C. C. U. S., D. W. Va.

1098 In the Circuit Court of the United States for the District of West Virginia, in Equity, at Clarksburg.

THE CAUCA COMPANY and THE COLOMBIAN CONSTRUCTION AND Improvement Company, Complainants,
vs.
THE REPUBLIC OF COLOMBIA, Defendant.

Answer to Cross-bill.

The answer of the defendant, The Republic of Colombia, to the cross-bill of the Cauca Company and the Colombian Construction and Improvement Company, in chancery exhibited and filed herein by leave of the court.

First. Answering the first paragraph of said cross-bill, this defendant says that it admits to be substantially true the averments of said paragraph as to the proceedings had herein between the parties to this cause, but for accurancy and certainty as to the same it refers to the said proceedings themselves.

Further answering said paragraph, this defendant *fendant* denies that there was any reward made on the 22d of October, 1897, or at any other time by the commission of arbitration appointed by the Republic of Colombia and the Cauca Company, but on the contrary this defendant avers the fact to be that said commission of arbitration never made any award, but that certain members thereof, after the autonomy of said commission had been ruptured by the lawful resignation of one of its members and before it had been restored as provided in the convention creating the same, undertook to make and promulgate as the award of the said commission a certain false, unlawful and erroneous decision, and that the proceedings in this cause were instituted to set aside and have decreed to be null and void the said pretended award.

Second. Answering the second paragraph of said cross-bill, this defendant says that it is true that this defendant on or about August 27, 1890, entered into a certain contract with one James L. Cherry, a copy of which *is* marked "Exhibit No. 4," is filed with the original bill herein. This defendant does not admit the terms of said contracts or the rights of the parties to be as alleged in said paragraph, but refers to the contract itself therefor.

This defendant denies that by the said contract the said Cherry and his assigns became the owners of the railroad then and
1099 thereafter constructed, but, on the contrary, avers that the said railroad by the terms of said contract was to be the property of this defendant, the said Cherry having only a limited interest therein, as fully appears by said contract.

This defendant denies that the corporations, the Cauca Company and the Colombian Construction and Improvement Company, were incorporated for the purpose of carrying out the true intent and purpose of the said contract with said Cherry, but avers that the real purpose of the organization of said corporations was to speculate in stocks and bonds based upon the credit of the concessions in said

contract with said Cherry, and the said corporations were organized as part and parcel of a scheme to defraud this defendant.

This defendant denies that the Cauca Company and the Colombian Construction and Improvement Company received an assignment of the contract of August 27, 1890, between this defendant and the said Cherry, and this defendant avers that the said pretended contracts, copies of which are filed with the original bill, marked "Exhibits Nos. 7 and 8," are mere shams and part and parcel of a scheme on the part of said Cherry and others to cheat and defraud this defendant, to escape the obligations of his contract of August 27, 1890, and to speculate with stocks and bonds of the said corporations.

Third. Answering the third paragraph of said cross-bill, this defendant denies that within four months from the said 27th day of August, 1890, the complainants in this cross-bill in good faith commenced to repair the existing railroad belonging to this defendant, and that they in good faith did the various other works therein recited for the construction and equipment of the new road to be built under the said contract of August 27, 1890; and, if material, it demands strict proof of all facts therein alleged. And this defendant further shows that the said Cauca Company never did any act or work whatsoever within said four months, or any other time, or furnished any materials therefor, in the premises; and the averment of said cross-bill that it did such work, or furnished materials, is absolutely false.

Further answering, this defendant says that it has no knowledge as to whether or not the Colombian Construction and Improvement Company did any work or furnished any materials for the prosecution of the work under said contract of August 27, 1890; and, if material, it demands strict proof thereof. And this defendant further says that it never had any knowledge or notice, in fact or in
1100 law, of the existence of said last-named corporation, or of the pretended assignment to it of any rights under the contract with Cherry, or that it claimed to have any rights or interests thereunder or therein until, to wit, the 10th day of June, when it was for the first time apprised of its intentions in the premises through proceedings before the arbitration commission hereinafter mentioned.

Defendant further shows that some work was done upon the said railroad, but in an unskilful, negligent and improper manner, not in accordance with the terms of the contract and not in good faith, but merely such as amounted to a colorable attempt at compliance with the terms of said contract.

Defendant further says that it denies that it interrupted said work, attempted to forfeit said contract or to deprive the orators of their property by the passage of a decree declaring lapsed the said contract of August 27, 1890, or by any other means, but this defendant says that the Congress of this defendant, because of the failure to perform the said contract, declared, in accordance with the terms thereof, the same to be forfeited, and directed that proper proceedings be taken to enforce such forfeiture. That, by the terms of said contract, the question of the right of forfeiture, if disputed, was pro-

vided to be referred to arbitration, but the complainants in the cross-bill never agreed or offered, nor did either of them, to submit such question to arbitration as provided in the contract, but on the contrary, the said Cauca Company refused so to do, although, by the express terms of the said contract, it was stipulated that all controversies arising thereunder should be decided by the municipal courts of the Republic of Colombia or by the arbitration therein specifically provided for.

Defendant further says that it is true that the United States minister acting under instructions from the Secretary of State of the United States induced thereto by the false and fraudulent representatives of the complainants herein, or some of them, that they were denied justice although neither of them had ever sought the settlement of their controversies in any of the modes pointed out in said contracts either by appealing to the courts or by the arbitration therein provided for, sought to intervene therein, but this defendant at all times denied the right of the United States to act diplomatically in the matter, and insisted upon its right under the contract to the private and internal settlement of the controversy and the said minister finally abandoned the matter and left the settlement thereof to the private agreement between the defend-
1101 ant and the said Cauca Company, and they did actually settle the same by a private agreement between defendant and said Cauca Company dated January 4, 1897, a copy of which and a true and perfect translation thereof into English are filed with the original bill as "Exhibits No. 12."

Further answering said paragraph this defendant says that it is true that the Congress passed the law, a copy and translation of which into English are filed with the original bill marked "Exhibit No. 11," but it denies that said law is of the purport stated in said paragraph, and for the true terms and meaning thereof this defendant refers to the said exhibit. By the terms thereof the executive of this defendant was authorized equitably to compromise with the grantee of the railroad or his lawful representatives the questions or differences that may arise in consequence of the declaration of lapse of the franchise referred to in the resolution No. 9 of October 16, 1895, and it was made a condition of such a settlement that the franchise granted by the contract of August 27, 1890, should be renounced and surrendered, together with the railroad and all its fixed and rolling stock, buildings, tools, and other appurtenances. But it is wholly untrue, as set forth in said third paragraph of said cross-bill, the said law "further provided that a tribunal should be constituted to ascertain as a commission of arbitration the amount which was to be paid by the said Republic of Colombia unto your orators for their interest in the said railroad and its rolling stock and appurtenances," and this defendant avers that no such provision is contained in said law, and the only matter of arbitration therein referred to is the arbitration of the question of the right of forfeiture contained in article 37 of the contract of August 27, 1890, as will appear from the Exhibit No. 11, with the original bill and the reso-

lution of January 23, 1896, accepted by James L. Cherry and referred to in said Exhibit No. 11.

An English translation of said resolution is hereto attached marked "Exhibit No. 1."

In pursuance of the general authority to make an equitable compromise, given by the act set out in "Exhibit No. 11" to the original bill, and not of any special terms of said act, this defendant entered into the agreement of January 4, 1897, being "Exhibit No. 12," with the original bill, but this defendant denies that the said agreement was "for the submission to arbitration of the price payable to your orator, The Cauca Company," as alleged in said paragraph, but, on the contrary, this defendant says that the matter submitted to arbitration was the ascertainment of the amount
1102 the Cauca Company should prove it had expended on the works executed by it in the construction of so much of said railway as had been constructed, and for rolling stock, tools, etc., imported for use on such railway. Further answering said third paragraph of said cross-bill, this defendant admits the passages quoted from said agreement of January 4, 1897, to be correct quotations from the language thereof, but it does not admit to be correct the construction and meaning attempted to be given to said agreement, and for the true meaning thereof it refers to the said agreement, itself made "Exhibit No. 12" with the original bill herein.

Fourth. Answering the fourth paragraph of said cross-bill, this defendant admits to be substantially true all the averments thereof except the averment that said board of arbitrators was clothed with judicial powers, which this defendant denies, but it admits that said board was clothed with quasi-judicial powers strictly limited, and for the accurate determination of the nature and extent of the powers of said arbitrators it refers to the said agreement itself by which it appears that the only power conferred upon them was to ascertain and award the amount expended by the Cauca Company in the work of constructing and equip-ing the portion of the railroad which had actually been constructed.

Fifth. Answering the fifth paragraph of said cross-bill, this defendant denies the averment that at the date of the 35th session of the commission of arbitrators on the 22d day of October, 1897, it had formulated its findings and had agreed upon the result, and that the amounts of the various items claimed by your orator, The Cauca Company, to be due to it under the terms of said submission to arbitration had all been determined, adjusted and agreed upon by a majority vote of said commission. This defendant also denies the averment that at the said 34th session the said commission had passed upon every matter and thing proper and pertinent to their award and that all that remained was to formulate the same and to draft the finding and authenticate the same.

This defendant also denies the averment that by the terms of the adjournment of the 34th session, the work of the commission was to be formally completed on the 22d of October, 1897, at the 35th session.

This defendant also denies the averments that the items of the

entire sum of $452,048.93 had been ascertained and awarded at meetings prior to the 22d day of October, 1897, by a majority vote, and that the commissioner, on the part of this defendant, Manuel H. Pena, voted thereon.

On the contrary, this defendant avers that each and every
1103 of the said specified averments in said fifth paragraph of said cross-bill are false, and that most important items constituting the aggregate of said pretended award had not been disposed of, nor the consideration thereof completed on the 22d day of October, 1897, when the said Pena resigned; that he had not voted on the same, and this defendant is informed and believes and, therefore, avers that the same were never voted on at all by the said arbitrators or any of them.

And further answering, this defendant says, that at the 34th session of the said commission, on the 19th of October, 1897, one of the items of said pretended award, amounting to $48,668.18, being under consideration, the further consideration and discussion thereof was, at the suggestion of Lewis M. Haupt, and with the consent of Christian F. Schramme and Manuel H. Pena, the other arbitrators, suspended and postponed, to be taken up at a later date, to be thereafter designated by said Haupt, which was never thereafter done by him, and the discussion and consideration thereof was never resumed.

And this defendant further shows that at said same 34th session on the 19th of October, 1897, another of said items of said pretended award, amounting to the sum of $32,333.40, was taken up for discussion and consideration; but before the discussion and consideration thereof by the arbitrators was entered upon, at the suggestion of said Pena and by the consent of said Haupt and Schramme, the discussion and consideration thereof were postponed, to be taken up at the same time thereafter that the consideration of the item of $48,666.18 should be taken up, but was never thereafter discussed, considered or voted upon.

And this defendant further says that another item of said award, amounting to $10,000, was never at any time during the said Pena's membership of said commission brought to the attention of said commission; was never claimed by any one, nor was it discussed, considered, voted upon or allowed by said Pena; and that at no time did said Pena vote upon, or have an opportunity to vote upon, or discuss the said several items aggregating over $91,000, or either or any of them. And this defendant further says that many other material and important matters and things, constituting part of the said pretended award were disposed of after the said Pena had resigned without having been voted upon, agreed upon, discussed or considered by said Pena or by said commission while said Pena was a member thereof.

Further answering said fifth paragraph, this defendant
1104 says that it is true that the said Pena wrote and sent to the said Haupt the letter dated October 22, 1897, set out in the said paragraph, enclosing copy of his letter of the same date to the minister of hacienda of this defendant, who had appointed him, resigning from the commission and that Francisco J. Cisneros wrote

and sent to said Haupt and Schramme the letter of the same date set out in said paragraph. But this defendant says that such action on their part was taken without the knowledge of this defendant and was done without the consent or advice of this defendant or of any one acting or authorized to act for it in the premises, and was the independent action of the said Pena and Cisneros acting wholly upon their personal views of what was right in the matter.

And this defendant further says that the agreement of January 4, 1897, explicitly provided for the appointment of a person in the place of said Pena in case of resignation, and this defendant was willing to designate such a person had it had knowledge of the fact of such resignation before the making of the pretended award by the other two members of said commission, but it was not informed of said action of said Pena until after said pretended award was made and published by mailing copies thereof to the Secretary of State of the United States, and to General Julio Rengifo the diplomatic representative of this defendant in the United States, and the publication of the substance thereof in newspapers in New York city and elsewhere. That no application was ever made to this defendant or any one for it by the complainants in this cross-bill or either of them, or any one for them or either of them, or by or on behalf of the other commissioners or either of them to appoint any one in the place of said Pena, but that on the contrary, The Cauca Company, the complainant in this cross-bill, by its counsel, one Marcus Stine, and its representative, Christian F. Schramme, urged the immediate execution of the said pretended award and on the same day, the 22d of October, 1897, and within a few hours after the receipt of said resignation of said Pena, the said pretended award was composed, written out in triplicate, executed by the said Haupt and Schramme, and acknowledged before a notary, copies mailed as aforesaid to the Secretary of State of the United States and the diplomatic representative of this defendant, and the substance of the award was communicated to the newspapers in time to appear in the issues of October 23d, 1897.

Sixth. Answering the sixth paragraph of said cross-bill, this
1105 defendant denies that the resignation of said Pena was intended to frustrate the purpose for which said commission of arbitration was constituted, and denies that the same was not done in good faith, but on the contrary it says that the action of said Pena and said Cisneros was in entire good faith, in what they believed to be the covering of their personal responsibility, the reason given by said Pena being that he was not accorded proper treatment by the said commission, and that he believed the said Haupt and Schramme to be controlled by corrupt and fraudulent motives, and the reason given by said Cisneros being that by the retirement of the Colombian representative the commission was without further power to act until restored; and under these circumstances he had no right further to represent this defendant before said remaining members of said commission.

It is true that this defendant made no offer to appoint a substitute for said Pena, but as before shown this was impossible, because the

remaining members undertook, within a few hours of said resignation to make and publish the said pretended award, and had this defendant been given the opportunity, it would, under advice of counsel, some time theretofore given it, have at once designated a representative in the place and stead of said Pena. And this defendant further says that it was the absolute personal right of said Pena, whether from good or bad motives, to resign from said office, and such action was contemplated and provided for in said agreement of January 4, 1897, and that the necessary effect of such resignation of said Pena was not of itself to invalidate what had been lawfully done, but to destroy all power for further lawful action by the commission until a successor was appointed.

Further answering, this defendant says that the statements of the complainants in their answer to the original bill reiterated in this paragraph of their cross-bill, that the action of said Pena in resigning was with the "assent of the diplomatic representative of this defendant at Washington, to wit: the said Julio Rengifo, chargé d'affaires, and was assented to by him, with the intent, if possible, to make null and void the action of his government and of the United States Government, and the concurrence of the parties hereto for the purpose of a definite ascertainment of the rights of these defendants," is absolutely false and a malicious, unfounded and scandalous charge against the said Rengifo, and this defendant avers the fact to be that the action of said Pena in resigning was in direct opposition to the advice given by said Rengifo, on the only occasion when
1106 he was consulted on the subject, on which occasion said Rengifo distinctly advised and urged said Pena not to resign, and said Rengifo never at any time advised or assented to the resignation of said Pena.

Further answering, this defendant says it is true that said Cisneros sent to the minister of hacienda, *of this de-* of this defendant, a cablegram, in substance, though not in language, as is set out in said sixth paragraph, and that this defendant is informed and believes that in so doing he was acting under the advice of his personal counsel, Roderick Robertson, Esquire, of New York, and of a member of the firm of Evarts, Choate & Beaman, of New York. This defendant further shows that about the same time it received a cablegram from the said Julio Rengifo, strongly urging this defendant not to consent to the proposal of Cisneros contained in his cablegram of July 1, 1897.

This defendant further shows that after the said Cisneros had sent said cablegram to this defendant, the said Rengifo requested him to come to Washington, where he consulted the firm of Carlisle & Johnson, the counsel for this defendant in these proceedings, before any reply by cable was received from this defendant, and said counsel then and there advised said Cisneros with reference thereto as follows:

"Our advice is that the Columbian government should not withdraw its members of the commission or its representative, but that both should attend the sittings of the commission, and that the objections of the Colombian government should be timely, properly

and carefully made to every step of the commission considered beyond its authority. Should the commission in the end undertake to render a decision against the Colombian government outside of the provisions of the convention, the decision would be a nullity, and Colombia would be under no obligation to abide by it."

Thereafter, a cablegram from this defendant dated Bogota, July 5th, 1897, in substance though not in language, set out in said sixth paragraph of said cross-bill, was received by said Cisneros, but not as therein stated, through the Colombian consul, but from the said Rengifo, to whom it was sent and who in turn sent it to said Cisneros, by which means he and the said Pena were distinctly advised that it was not the purpose or desire of this defendant that said Pena should resign, nor did it approve such action on his part.

1107 And this defendant further says that neither this defendant nor the said Rengifo nor any one else authorized to act or acting on behalf of this defendant, gave any other or further direction or advise with reference to the resignation of said Pena than is hereinabove set forth, nor was this defendant nor the said Rengifo nor any one representing it further consulted on the subject.

This defendant denies the averments of said sixth paragraph of said cross-bill, that the sending of the cablegram of July 1, 1897, was a scheme on the part of the said Cisneros and Pena, and an *an* executive or other officer of this defendant to defeat the arbitration, and denies that there ever was any such scheme, and it denies that there was any scheme, understanding or agreement not to appoint a successor to said Pena should he resign, and pronounces said allegations to be absolutely false. And this defendant further denies each and every of the averments of said paragraph as to the existence of any scheme on the part of this defendant, or any one representing it, to frustrate the said commission, or prevent in any way its legitimate action within its jurisdiction, and each and every of the said allegations are wholly false.

Further answering, this defendant further denies that said Pena, on or about the 19th of October, 1897, came to Washington and consulted and agreed with the said Rengifo in furtherance of said alleged scheme that said Pena's resignation should take place, and that said Rengifo agreed with said purpose and assented thereto; but on the contrary this defendant says that on the night of the 21st of October, 1897, the said Pena, having come to Washington, informed said Rengifo that he (said Pena) had decided, on his own responsibility, to resign the next morning, and he then and there informed the counsel in these proceedings for this defendant that he had definitely so decided; that his personal self-respect would not permit him to continue on the commission. And on said occasion he neither asked nor received any advice from said Rengifo or said counsel, but expressly informed them that he was not seeking such advice, but merely came to announce his final determination, and neither the said Rengifo nor said counsel, nor any one representing this defendant, advised him as to said action, nor assented thereto.

Further answering said sixth paragraph, this defendant says that

the said agreement of January 4, 1897, being a purely private agreement between this defendant and the Cauca Company, and having no international or diplomatic character whatever, the diplomatic representative of this defendant in the United States had no
1108 official connection therewith, except in co-operating with the Secretary of State of the United States, in the appointment of an arbitrator. That the said Pena, as one of the arbitrators, and the said Cisneros, as the agent of this defendant, were the only persons authorized to act in the matter for this defendant, and neither of them was subordinate to the diplomatic representative of this defendant nor had he any authority or control over them or either of them. That this defendant always denied any diplomatic character to the claim provided to be settled by said agreement, and when, in July, 1897, the said Cisneros, who is, and for more than twenty years has been, a citizen of the United States, voluntarily and without request, consulted the diplomatic representative of this defendant, the said Julio Rengifo, it was because of the well-known desire of this defendant to prevent the possibility of any diplomatic character attaching to said claim, that the said Rengifo earnestly advised against the propositions contained in the cablegram of the first of July sent by the said Cisneros to the minister of hacienda of this defendant, who is the officer charged with the management of the financial affairs of this defendant, having no official connection with the foreign relations of this defendant which are in charge of its minister of foreign relations.

Further answering, this defendant says that it has fully disclosed herein all communications between this defendant and any of its officers relating to the resignation of said Pena; that the said cablegram from said Cisneros to the minister of hacienda of July 1, 1897, in substance, set out in said paragraph, and the reply thereto of July 5, 1897, and the letter of said Pena of October 22, 1897, to the minister of hacienda, set out in the fifth paragraph of said bill, are the only communications between this defendant and said Pena or Cisneros on the subject of said resignation and the said cablegram of July 1, 1897, is the only communication from this defendant on the subject.

This defendant further shows that the cablegram of the said Rengifo to this defendant advising against the resignation of said Pena, contained matter of a confidential nature relating to the affairs of this defendant with a foreign State, not the United States of America, and this defendant is advised that such communication is privileged and that it cannot therefore be required to disclose the same. But this defendant repeats that the said Rengifo advised this defendant most strongly against the resignation of said Pena, and never at any time advised otherwise or assented to his resignation, nor did this defendant or any one for it.

1109 Seventh. Answering the seventh paragraph of said cross-bill, this defendant says that it is true that the portion of the railroad constructed under the contract of August 27, 1890, was delivered to this defendant, but this defendant denies that it is therefore bound to abide by and perform the said pretended award be-

cause it says that the said award is invalid and void through no default or wrong of this defendant but through the fraud and misconduct of the said complainant to this cross-bill and their representative-, the said Schramme and the said Haupt, and because the said pretended award is without the submission and beyond the jurisdiction of the commission, and was made when the autonomy of the commission had been destroyed, and without any attempt on the part of the complainant or the said Haupt or Schramme to have it restored, and without any opportunity having been given to this defendant to restore the autonomy of said commission.

Eighth. Answering the eighth paragraph of said cross-bill, this defendant says that it is advised, and believes, that the averments thereof as to matters of law are not such as this defendant is required to answer.

Answering the averments of fact contained therein, this defendant denies that any award has been duly made which this court can in equity uphold. This defendant denies that the complainants are entitled to receive from this defendant the sum of $452,048.93, or any other sum, by reason of the said pretended award, because the said pretended award is invalid and void. But this defendant says that notwithstanding the invalidity of the said pretended award, this defendant having stipulated and agreed, during the proceedings of the commission, to a finding against it of the sum of $33,909.14, did, in its original bill herein, tender itself ready and willing to pay the said sum, and it is still so ready and willing to pay the said sum; but it is advised that any claim which the said Colombian Construction and Improvement Company may pretend to have must be satisfied out of said sum.

Further answering said paragraph, this defendant says that it has in all respects, since the institution of this litigation, conformed itself to the rules and practice of this court, doing and being already to do all things which this honorable court in the exercise of its jurisdiction has required or may hereafter require of it, as of any private litigant, and it denies that it is requisite or would be proper for this court to require this defendant to appoint any person representing it upon whom process of any sort shall be served. That this
1110 defendant is now before this court, submitting to its jurisdiction and represented by counsel, and that the insinuation of the complainants' cross-bill that this defendant will act contumaceously is unwarranted and should not receive a colorable sanction by this court. And this defendant says that should this defendant attempt to evade or defy any of the lawful process or directions of this court, this court can then vindicate its authority by the dismissal of this defendant's original bill or such other procedure as may be lawful.

And for further answer to the said cross-bill this defendant says: That Julia Rengifo is, as the national representative of the defendant in the United States, and as its agent *ad hoc*, fully authorized and empowered by this defendant, The Republic of Colombia, to sign this answer in its name and to make oath thereto on its behalf.

And finally this defendant says:

That the pretended award of October 22, 1897, made by the said Haupt and Schramme is totally invalid and void by reason of the matters set forth at length in the original bill herein (all of which are hereby referred to and made part of this answer), as well as by reason of other matters hereinbefore in this answer set forth; notwithstanding all and singular the averments of the answer of defendants to the original bill, as well as the averments of the said defendants in the cross-bill filed herein.

And this defendant submits to the court that the said complainants have not in and by their cross-bill shown themselves entitled to any relief in this cause save and except to the discovery prayed and by this answer fully and freely accorded.

THE REPUBLIC OF COLOMBIA,

By its duly authorized agent,

(Signed) JULIO RENGIFO,

Charge d'Affaires ad Interim of the Republic of Colombia in the United States of America.

CALDERON CARLISLE,
WILLIAM G. JOHNSON,
Solicitors for the Defendant.
EDWIN MAXWELL, *Of Counsel.*

CITY OF WASHINGTON, }
District of Columbia. }

I do solemnly swear that I have read the annexed and
1111 aforegoing answer of The Republic of Colombia, defendant, to the cross-bill of The Cauca Company and The Colombian Construction and Improvement Company, complainants, and know the contents thereof; and that the facts therein stated as true are true, and those stated on information and belief I verily believe to be true.

(Signed) JULIO RENGIFO.

Subscribed and sworn to before me this 8th day of June, 1898.

[SEAL.] OSCAR LUCKETT,
Notary Public.

EXHIBIT No. 1.

Resolution Passed on the 23d of January, 1896, Relating to the Railway from Buenaventura to Manizales.

TREASURY DEPARTMENT, BOGOTA, *January 23d*, 1896.

Whereas, Mr. James L. Cherry, duly authorized as attorney for "the Cauca Company," as it appears from a power of attorney granted by said company in the city, county and State of New York, United States of America, on the 23d day of October, 1895, before Mr. Julio C. Ponce de Leon, notary public of the said city and county, an authenticated copy of which power has been presented at this department, wherein Mr. Cherry informs this department

that he is willing to make a friendly agreement as a representative of aforesaid company for the purpose of arriving at a decision in the pending controversies between the government and the said "Cauca Company," relating to the fulfillment of the obligations agreed upon by both parties in accordance with the contract made on the 27th day of August, 1890, concerning the construction of a railroad from Buenaventura to Manizales, an agreement which, while possibly beneficial to both parties, yet cannot be immediately carried out because the government lacks power to act on the matter.

Therefore, it is resolved:

1. To declare suspended the effects of the resolution passed on the 16th day of October, 1895, wherein is declared lapsed the contract of 27th August of 1890, relating to the construction of a railroad from Buenaventura to Manizales, until the next Congress shall decide whether or not it will authorize the government to enter into a friendly agreement with "the Cauca Company."

1112 If Congress does not authorize such an agreement, or "the Cauca Company" does not accept the basis which Congress may mark out to the government for the company's concurrence, the constitution of the tribunal of arbitration shall be proceeded with in conformity with article 37 of the aforesaid contract, each party being free to take all the time that may be necessary for the establishment of said tribunal.

2. Meantime both parties shall continue to fulfill the obligations of said contract. The guaranty of interests, corresponding to the year 1895, shall be paid in accordance with the liquidation made in this department in view of the documents that the case may require.

3. It is understood that the suspension of the effects of the lapse referred to, which suspension has for its object the procuring of a friendly settlement of the differences existing in the fulfillment of the contract with the intervention of Congress, does not argue either in favor or against any of the parties nor affect the rights that each of them may in due time claim before the court of arbitration.

Be this resolution communicated to the attorney of "the Cauca Company," so that if he accepts this agreement he shall sign the acceptance thereof, and the same is hereby ordered to be published.

The subsecretary, in charge of the department,

JUSTINIANO CANON.

BOGOTA, *January* 23*rd*, 1896.

I accept in all its parts the above resolution.

The attorney of "the Cauca Company."

JAMES L. CHERRY.

1113 *Replication to Answer to Cross-bill.*

Filed 29 Day of July, 1898. L. B. Dellicker, Clerk C. C. U. S., D. W. Va.

In the Circuit Court of the United States for the District of West Virginia, at Clarksburg.

THE CAUCA COMPANY and THE COLUMBIAN CONSTRUCTION & IMPROVEMENT COMPANY, Complainants,
vs.
THE REPUBLIC OF COLOMBIA, Defendant. } In Equity.

The replication of said complainants in above cause to the answer of the said Republic of Colombia, defendant.

These repliants, saving and reserving all advantages of exception to the manifold insufficiencies of said answer, for replication thereto say that they will aver and prove their said bill to be true and sufficient, and that the said answer is untrue and insufficient; wherefore they pray relief as in their said cross-bill set forth.

(Signed) COWEN, CROSS & BOND,
Sol's for Complainants in Cross-bill.

* * * * * * *

1116 *Replication of Complainant.*

Filed 15 Day of May, 1899. L. B. Dellicker, Clerk C. C. U. S., D. W. Va.

In the Circuit Court of the United States for the Fourth Circuit, District of West Virginia, at Clarksburg.

THE REPUBLIC OF COLOMBIA, Complainant,
vs.
THE CAUCA COMPANY and THE COLOMBIAN CONSTRUCTION AND Improvement Company, Defendants.

The replication of the complainant, The Republic of Colombia, in the above cause, to the answer of The Cauca Company and The Colombian Construction and Improvement Company, defendants.

This repliant, by leave of the court first had and obtained under the order passed this fifteenth day of May, 1899, saving and reserving all advantage of exception to the manifold insufficiencies of said answer, for replication thereto says:

That it will aver and prove its said bill to be true and sufficient, and that the said answer is untrue and insufficient; wherefore it prays relief as in its said original bill herein set forth.

CARLISLE & JOHNSON,
Solicitors for Complainant.

* * * * * * *

1283 *Opinion.*

In the Circuit Court of the United States for the District of West Virginia.

THE REPUBLIC OF COLOMBIA
vs.
THE CAUCA COMPANY and THE COLOMBIAN CONSTRUCTION and IMPROVEMENT COMPANY. } In Equity.

GOFF, *Circuit Judge:*

This is a suit in equity instituted by The Republic of Colombia against The Cauca Company and The Colombian Construction and Improvement Company, two corporations organized under the laws of the State of West Virginia. The purpose of the bill is to obtain a decree directing the cancel-ation of an award made by two of three arbitrators, acting under a certain agreement of arbitration dated January 4, 1897, between the complainant and The Cauca Company, one of the defendants, the object of which was to obtain a settlement of all the differences then existing between the Republic of Colombia and the Cauca Company, in connection with the contract for the construction of the Cauca railway. The award was returned October 22, 1897, signed by two of the three arbitrators named in the submission, and was in favor of the Cauca Company for the sum of four hundred and fifty-two thousand forty-eight dollars and and ninety-three cents ($452,048.93) in gold coin of the United States to be paid by the complainant to the Cauca Company on January 26, 1898, in addition to the sum of two hundred thousand dollars ($200,000.00) previously paid on account. The complainant insists that the award is invalid because, it was made by but two of the three arbitrators; because it comprehends the allowance of items which were never considered at any time by all three of the members of the commission acting together; because the arbitrators acted in excess of their powers, in that they considered and made their award as to matters not committed to their judgment by the articles of submission; for other reasons alleged in the bill, but not relied on in the argument, and consequently they will not be specially referred to.

The defendants duly filed their answer to said bill, to which exceptions on account of impertinence were taken and disposed of. A cross-bill was tendered by defendants and filed by leave of court,

praying for a discovery as to certain matters referred to in
1284 the original bill as well as to transactions connected with

the agreement of submission and the proceedings of the commission at its sessions held thereunder, and also for a decree for the specific performance by the Republic of Colombia of the agreement of January 4, 1897, and for the payment of the award before mentioned; and that the said Republic of Colombia be required to designate an attorney-in-fact within the jurisdiction of this court, with authority to accept service of such process or orders as may be found

necessary for the exercise of the jurisdiction of the court. The cross-bill was answered, issue joined, testimony taken and the case regularly submitted after argument by counsel. The record is most voluminous, the pleadings, exhibits and testimony making several large printed volumes, and it would be a discourtesy of which this court will not be guilty, if mention were not made of the fact that the briefs of counsel and their oral arguments, while able and eloquent, by far exceed the record in size as well as in interest. I have given the testimony careful study, for the decision of the case depends more on the proper finding of the facts than on the determination of the law. The former is not easy of solution, may be involved in doubt, but the propositions of law to be disposed of and applied, are, I think, well established, even elementary in character.

First, the question of jurisdiction is to be disposed of, the Republic of Colombia is a foreign State, within the meaning of those words as used in the Constitution of the United States, and as such it has the right to maintain a suit in this court against any party found within this district, concerning any subject-matter of which this court has jurisdiction. The Sapphire, 11 Wall. 164. The defendants were found and served with process within the jurisdiction of this court, they have appeared and answered and they have filed their cross-bill, which has been answered by the sole defendant thereto, the complainant in the original bill. That courts of equity have jurisdiction of bills the object of which is to set aside awards, and decree the same to be void, is too well settled by numerous decisions to admit of doubt. 2 Story's Eq. Jur., secs. 1451, 1462; 2 Pom. Eq. Jur., sec. 919; Burchell *v.* Marsh, 17 How., 349.

Before proceeding to consider the validity of the award, it will be well to state the facts relating to the controversy for the settlement of which the arbitration was entered into: On August 27, 1890, James L. Cherry, a citizen of the United States, entered into a written contract with the complainant to construct and operate a steam railway in Colombia, between Buenaventura, on the Pacific coast, and Manizales, by way of Cali. This line of railway was to
1285 be constructed and opened to traffic, as far as the city of Cali, within four years from the date of said contract, unless prevented by fortuitous circumstances, or *vis major*. This contract was approved by the Congress of Colombia, by an act known as law 16, 1890. Upon that part of the road to be completed within four years, complainant guaranteed interest to Cherry on the basis of five per cent. per annum, for eighteen years, on the sum of $38,000 American gold for each kilometre. A portion of the line had been built previous to this contract with Cherry, which was by it assigned to him, together with the rolling stock thereon and the buildings relating thereto. Upon this portion of the road the guaranteed interest of five per cent. was to be paid on the basis of $8,000 per kilometre. This interest was secured to Cherry by one-half of the gross revenues of the Colombian custom-houses on the Pacific coast. The term of the concession was seventy years, at the end of which period the railway was to become the property of *of* the Republic of Colombia. As security on his part Cherry was to deposit in New York with

complainant's depositary $50,000 in American gold, before October 27, 1890, which was to be returned to him when a portion of the road equal in value to the $200,000 was constructed. Complainant was to furnish military protection to the employees and the property of Cherry without cost to him, and he was given the right to use wood, stone and other material from the government lands required for railroad construction. He had the right to assign the contract to any individual or company of a private nature, but not to any government or foreigh nation, but notice of such assignment was to be given to the Republic of Colombia. Troops, employees and material of the government were to be carried over the railway at half rates. Cherry was to have his domicile in any city in Europe or America, selected by him for that purpose, but if he should not select Bogota, he was to keep in this city an agent vested with authority to deal with the government concerning all matters relating to said contract. It was further provided that if, for any reason, the government should declare the concession to be forfeited, that Cherry should have the right to submit the matter to the decision of two experts, one to be appointed by the government and the other by Cherry, and such experts were to appoint an umpire in the case of disagreement, and the decision of the arbitrators or of the umpire was to be final and unappealable. On November 29, 1890, Cherry assigned his interest in the contract to the two defendants, The Cauca Company, which was organized to operate the road,
1286 and The Colombian Construction and Improvement Company, organized to construct it. The complainant was notified of the assignment, and thereafter recognized the Cauca Company as such assignee.

The defendant, The Cauca Company, began the construction of the road in due time. It purchased rails, locomotives, supplies and other necessary material for the construction and operation of the railway. The work progressed, but was not completed within the four years stipulated for in the contract. The complainant insisted that the failure to complete was because of the default and mismanagement of the defendant, The Cauca Company, while said company claimed that it was because of the improper conduct of the government of the Republic of Colombia, and also because of *vis major*. On the 10th day of December, 1892, the minister of public works of Colombia and the attorney of the Cauca Railroad Company entered into a written agreement by which the time for the completion of the first section of the road was extended for two years. On the 16th of November, 1894, the Colombian Congress passed an act, the first section of which reads as follows: "The government will proceed to decree lapsed the contract of 27th of August, 1890, referring to the construction of the railroad from Buenaventura to Manizales, inasmuch as Congress does not approve of the contract 98 of 1892, carried out between the minister of public works and Mr. Victor Mallarino, general representative of the Cauca Railroad Company, which deals with the extension of time for the construction of said railroad." This act also authorized the complainant to assume possession of the road and to continue its construction. The defendant,

The Cauca Company, as a matter of fact, still continued in possession of the part of the road that was completed, and proceeded with the construction of other portions thereof. Said company protesting to the complainant as to the act of forfeiture mentioned, demanded the formation of a tribunal of arbitration, as provided for in the original contract. Several efforts were made by the parties to adjust the difficulties so existing, but without success, when the matter was brought to the attention of the Secretary of State of the United States, who in May, 1895, advised the minister representing the United States at the capital of the Republic of Colombia that the action of said Republic in regard to the forfeiture of the concession held by the Cauca Company appeared to be a cause for diplomatic interference, and directed him to so inform the complainant. In October,
1895, the Republic of Colombia directed that Cherry should
1287 appear at Bogota within thirty days, for the purpose of proceeding with the arbitration, and advised that in default of his so doing that all rights claimed by defendants under the contract would be forfeited.

The Secretary of State of the United States again communicated with the minister of that government, residing in the Republic of Colombia, instructing him in substance to render assistance to the defendant in the negotiations relating to said difficulties, and to obtain an extension of thirty days in order that Cherry, who was then in the United States, might be able to reach Bogota. This extension was asked for by said minister and was granted by complainant. In December, 1895, Mr. Cherry and Mr. Schramme, as representatives of the Cauca Company, arrived in Bogota, and proceeded with the negotiations looking to a settlement of the controversy, the complainant being represented by its executive and other officers. No result was reached, and the subject was postponed until such time as the Congress of the Republic of Colombia could convene and consider the matter, each party in the meantime to retain such rights as they held under the original contract. The Congress of the Republic of Colombia convened and passed on October 20, 1896, law 41, authorizing the government to enter into an agreement with the Cauca Company, having in view the equitable adjustment of the then existing troubles.

This act contained among other provisions the following: "In any event the condition of the friendly settlement shall be the renunciation on the part of the grantee, or his representatives, of the franchise granted, and the consequent and immediate delivery of the railroad and all its fixed and rolling stock, buildings, tools and other appurtenances."

Various propositions and counter-propositions of adjustment were offered, but no conclusion was reached, and finally on January 4, 1897, the agreement was entered into under which the award mentioned was made.

In article 1, of the submission, complainant and the Cauca Company compromise and settle all pending differences in connection with the contract approved by law 16, of the year 1890, regarding the construction of the railway mentioned.

In article 2, the company surrenders absolutely the concession, and agrees to deliver to complainant within fifteen days the railway, plant and rolling stock. In exchange complainant agrees to pay the Cauca Company a "just indemnity for the works and labors which the company may have executed during the time in which the enterprise has been in its charge." And also to pay for rolling stock, etc.

1288 In article 3, the parties agreed that the indemnity should be a sum equal to what "the company shall prove to have expended on the labors and works executed by it in the construction of the railway."

In article 4, provision was made for special commission to fix the indemnity, to be composed of three members, one to be chosen by complainant, one by the Cauca Company, and the third by the Secretary of State of the United States and complainant's minister at Washington, acting jointly.

In article 5, the commission was given authority to fix the indemnity and to appraise the structure, works, labors and materials. In order to reach a proper indemnity it was to examine the books and accounts of the company at New York, and the documents that complainant and the company might present in support of their claims, and such as the commission might demand. Commission was to inspect the railway, examine witnesses, appoint experts if necessary, and fix the time within which the parties might make their proofs. It was also to determine the procedure to be followed in the exercise of the powers conferred upon it, including its own acts as well as the procedure of the parties themselves.

In article 6, it was set forth that if either of the commissioners resigned, or declined, or should for any reason cease to act, that the proceedings of the commission should not thereby be invalidated, but the vacancy was to be filled by a new appointment to be made within thirty days, by the party whose commissioner failed to act. If such party failed to so appoint, then it was provided that the Secretary of State of the United States and the complainant's minister at Washington acting together should fill the vacancy.

In article 7, the parties were authorized to appear before the commission either in person, by attorney-in-fact or by agents.

In article 8, the time allowed for the commission to make and file its award was fixed at one hundred and fifty days, counting from its first meeting, but an extension of sixty days was provided for in case of justifiable delay.

In article 9, it was agreed that the award should be final and without appeal.

In article 10, it was stated that the complainant, calculating that the company had invested about $200,000 in the construction of the railway (the company claiming much more), pays in advance to the company $200,000 in gold, on account of the indemnity to be thereafter awarded by the commission, this being done so as

1289 to secure immediate possession of the railroad by complainant. It was also stated that in case of an award for more

than $200,000 the complainant was to pay the excess in such manner as should be determined by the commission.

In article 11, provision was made for turning the railway and property over to such person as may be designated by complainant, and for the taking of an invoice that should clearly set forth the condition of everything delivered.

In article 12, the expenses of the commission are provided for and directions are given that the award shall find whether one or both parties shall pay the same.

In article 13, the discharge and release of the parties was provided for, upon performance of the arbitration, and the extinguishment of the original concession was arranged for.

In article 14, it was agreed that the parties to the submission should select their commissioners within eight days after the ratification of the agreement.

In article 15, provision was made for the ratification of the submission by the vice-president of the Republic of Colombia.

Under this agreement the complainant appointed Manuel H. Pena, and the Cauca Company, Christian F. Schramme, as their respective commissioners, and the Secretary of State of the United States and complainant's minister at Washington selected Lewis M. Haupt, a civil engineer, as a third commissioner. On the 3d day of April, 1897, the commission so constituted met in the city of New York, duly organized, and chose as their chairman the said Lewis M. Haupt. The complainant was represented before the commission by Francisco J. Cisneros as attorney, Roderick Robertson as counsel, while the Cauca Company had as attorney Marcus Stine. The commission decided at its second meeting, held April 27, 1897, that all of its decisions soould be by majority vote of the members, and at its third session it was resolved that, in case of disagreement between the members of the commission, the chairman should decide the question at issue. The sessions of the commission were duly held at stated times, much testimony was taken and many witnesses examined, a number of them being expert Spanish lawyers and literary men, as to the true meaning of the words relating to the scope of the commission and the extent of the submission.

The books of the Cauca Company were offered, explained, referred to experts for examination and report and subsequently con-
1290 sidered by the commission. During the twenty-seventh session, held on August 30, 1897, the commission finding that it could not complete its work within the limit of one hundred and fifty days, unanimously resolved to extend the time for sixty days additional. At its thirtieth session, held on October 12, 1897, the commission commenced the consideration of the testimony—oral arguments and briefs of counsel having been made and filed—for the purpose of formulating its award. An allowance of $233,909.14 was made by the commission unanimously, as the cost of the physical construction of the road; the sum of $108,181.42 was awarded by a vote of two to one, as due on account of the salaries of the executive officers of the company to the 26th of January, 1897; the sum of $135,000, was awarded, by a vote of two to one, as the cost

to the company of the original concession; the sum of $13,643.33, was allowed by a like vote, as interest on the cost of concession; the sum of $29,385.88, was, by a like vote, allowed as traveling expenses of the officers of the company in connection with the business thereof; the sum of $29,200.00, was awarded, by a like vote, as reimbursements to the company, for a portion of the extra compensation paid its officers for extra trips to Bogota; the amount of $16,605.10 was allowed on account of expenses of the company at its New York office; the sum of $5,122.48 was also allowed, by a like vote, on account of incidental expenses. At the meeting of the commission held on October 19, 1897, it was moved to award the company as interest on the cost of physical construction to January 26, 1897, the sum of $48,668.18, and the questions relating thereto were discussed, but the vote thereon was postponed. At the same meeting a motion was made that the company be allowed the sum of $32,333.40 as the interest on the actual amount paid in by the bondholders of the company. That matter was fully discussed by the members of the commission, but no vote was taken, and further action thereon was postponed. This meeting was the thirty-fourth of the commission, and all the members of the same were present, as they had been at all previous meetings; all the members had heard the testimony and the arguments, and all had taken part in the discussion and deliberations relating thereto, as is disclosed by reading the ten hundred and fifty-eight printed pages of their proceedings.

The thirty-fifth session of the commission was held on October 22, 1897, at which meeting Mr. Pena, the member designated by the complainant, did not appear, but he caused to be presented to the commission at its said session a communication dated Octo-
1291 ber 22, 1897, of which the following is a copy of the translation thereof, the original having been written in the Spanish language:

"To his excellency the minister of hacienda, Bogota, Republic of Colombia:

"In view of the fact that Lewis M. Haupt and Christian F. Schramme, both appointed as members of the commission created pursuant to the convention of January 4, 1897, to decide the controversy between the Cauca Company and the Republic of Colombia relative to the Cauca railway, have declared their intention to allow to the Cauca Company very large amounts of money for alleged expenditures of the company having no relation to either the construction expenses of the company or the purchase of material on the construction of said Cauca railway or for use thereon, and whereas the said commission has not and never had jurisdiction to pass upon or allow such expenditures; and whereas, in my judgment, said commissioners have departed from the terms of said convention and propose to act in the matter of said controversy in a manner wholly beyond their official power as such commissioners and to make an award upon matters which the parties to said controversy never intended to submit to their decision; and, whereas, under the said

circumstances I am convinced that it is my solemn duty to refuse to act further with such commissioners and to decline to remain a member of such commission until the illegal intentions of said commissioners shall have been carried out, by the making on their part of a pretended award upon matters not submitted to said commission.

"I therefore beg to say that I hereby resign as a member of said commission, such resignation to take effect at the moment of my signature hereto.

"Dated at the city of New York, this 22nd day of October, 1897."

This copy of the letter of resignation was enclosed in a communication from Mr. Pena to the secretary of the commission, and at the same time there was presented to said commission a letter, of which the following is a copy:

"NEW YORK, *Oct.* 22, 1897.

"Messrs. Lewis M. Haupt and Christian F. Schramme.

"GENTLEMEN: Being informed by Mr. Manuel H. Pena that he has resigned his office of commissioner in the matter of the arbitration of the controversy between the Cauca Company and the Republic of Colombia, I desire on behalf of the said Republic of
1292 Colombia, to say that such resignation on the part of Mr. Pena has destroyed the autonomy of the commission of which you and he were members, and that under such circumstances no further act can have any force or effect as an official act on behalf of such commission or as an official act of a commissioner in said matter.

"Yours very faithfully, F. J. CISNEROS."

The following resolution was then passed by the votes of the remaining two commissioners, viz: "Whereas, by the terms of the convention pursuant to which this commission was created, it is provided in the eighth article thereof that, 'In order to carry into execution the proceedings fixed by this agreement, and to render its decision, the commission shall meet in the place or places elected by it, and for such purpose shall have one hundred and fifty days counting from the installation, which may be extended sixty days more in case justifiable grounds of delay shall arise;' and, whereas, this commission met and organized on the 3rd day of April, 1897, pursuant to the provisions of article fifteenth of said commission, and has since that time heard the proofs and allegations on behalf of the respective parties to the said convention, and has been attended by the attorneys and counsel for the respective parties, and has heard and considered their arguments, both oral and printed, and all of the members of this commission appointed by the said convention having participated in all of the said meetings which have heretofore been held; and whereas, the time fixed by the said article eighth for the rendition of the decision of this commission has been extended in pursuance with the provisions of said article eighth, and the said extended time will expire on the 31st day of October, 1897; and whereas, all of the members of the said commis-

sion have deliberated with respect to all of the matters submitted to it, and a conclusion was reached by the members of this commission with respect to all said matters prior to this date, but such conclusion not as yet been formally announced; and whereas, the attempt on the part of Senor Manuel H. Pena to resign from his position as a member of this commission, and his refusal to act as a member thereof at this time and under the aforesaid circumstances, and the concurrence in his action by the attorney for the Republic of Colombia, indicate that it will be impracticable to procure the appointment of another commissioner in place of the said Pena, in the event that his attempted resignation is of any effect, so as
1293 to enable this commission to render a decision within the time required by the aforesaid eighth article; and whereas, by article fifth of said convention it is provided that the said commission shall determine the procedure to be followed in the exercise of the powers conferred upon it both as to its own acts as well as to the proceedings of the parties themselves, and pursuant to said provisions it was unanimously determined by this commission, with the concurrence of the attorney for the Republic of Colombia and of the attorney for the Cauca Company, that all decisions to be rendered by this commission and all differences of opinion should be settled by a majority vote, and that such decision should be final; and whereas, the said commission is now ready to make its formal decision, the terms of which were discussed between the various members of the said commission, including the said Pena; and whereas, the said Pena has been requested to attend at this meeting and to participate in the deliberations of the commission, and has failed and refused to attend thereat; *Resolved*, That this commission proceed forthwith to make its award, and to formulate its decision as to the matters involved in the said convention."

The following award was then made and announced:

"To the Republic of Colombia, the Honorable John Sherman, Secretary of State of the United States, and the Cauca Company:

"The commission appointed under the convention of January 4, 1897, which convention was entered into between the Republic of Colombia and the Cauca Company, having been duly organized on April 3, 1897, by all of the members appointed thereto, to wit: Lewis M. Haupt, C. E., Manuel H. Pena, C. E., and Christian F. Schramme—and having had numerous sessions thereafter, at all of which the several members appointed to the said commission were present and participated in the proceedings taken before said commission; and the said commission and the aforesaid several members thereof having examined the books of the Cauca Company with great care; and having heard all the witness- produced by the Republic of Colombia and the Cauca Company, respectively; and having considered the arguments, both oral and written, and the various documents submitted for the consideration of the said commission; and all of the said commissioners having united in deliberating with respect to the matters submitted to it pursuant to the terms of

the said convention; and the undersigned, constituting a
1294 majority of the said commissioners, having reached the conclusion that the Cauca Company is entitled to be awarded the sum of four hundred and fifty-two thousand and forty-eight and $\frac{93}{100}$ dollars ($452,048.93) in gold coin of the United States of America, in payment of its claim against the Republic of Colombia, which claim is the subject of the aforesaid convention; now, therefore, we, the undersigned commissioners, constituting a majority of the aforesaid commission, pursuant to the authority vested in the said commission under the terms of the aforesaid convention, hereby find that the Cauca Company is entitled to receive from the government of Colombia, on account of the matters referred to in said convention, including the moneys already paid by the Republic of Colombia to the said Cauca Company, the sum of six hundred and fifty-two thousand and forty-eight and $\frac{93}{100}$ dollars ($652,048.93), in gold coin of the United States of America, of which sum the said Republic of Colombia has heretofore paid the said Cauca Company the sum of two hundred thousand dollars ($200,000), leaving due and unpaid to the Cauca Company the sum of four hundred and fifty-two thousand and forty-eight and $\frac{93}{100}$ dollars ($452,048.93) in gold coin of the United States of America, which sum we hereby award to the said Cauca Company, and which sum is to be paid by the Republic of Colombia to the said Cauca Company in the city of New York on the 26th day of January, 1898.

"The Republic of Colombia is also to pay, as a special allowance as part of the costs incident to the said commission, to attorney Marcus Stine, representing the Cauca Company, the sum of ten thousand dollars ($10,000) in gold coin of the United States of America, on the 26th day of January, 1898.

"In witness whereof, we have hereunto set our hands and seals this twenty-second day of October in the year one thousand, eight hundred and ninety-seven.

"LEWIS M. HAUPT, *Chairman.* [SEAL.]
"C. F. SCHRAMME. [SEAL.]"

On the said 22nd of October, 1897, after the award had been acknowledged before a notary public, the chairman declared an adjournment *sine die*.

It is this award, made under the circumstances described, that the complainant prays may be decreed to be void.

Is the award defective because only signed by two of the three arbitrators? Was it the intention of the parties to the con-
1295 vention that there should be no award, and that the settlement should not be accomplished, unless all three of the commissioners agreed to and signed the finding? Was not the commissioners selected by the Secretary of State of the United States, and the minister resident of the Republic of Colombia, intended to be an umpire, to cast the deciding vote and determine all matters of difference between the commissioners selected by the parties to the convention? It seems to me that such was the intention. If it was otherwise, surely the language selected was peculiarly unfortunate.

A unanimous decision was not required in express words, and in a case of this character it should not be implied. It was certainly the wish of the parties that the arbitration should be conclusive, effective and final. The Cauca Company, in consideration of the submission, surrendered the railway and the property connected therewith to the Republic of Colombia, and the latter, in order to secure such possession, paid $200,000 in cash, and agreed to pay such further sum as the commissioners should award, it being conceded that there should be no appeal from the result. The commissioners selected by the parties to the agreement were avowedly favorable to the contentions of those respectively designating them, but the third member, Mr. Haupt, was disinterested and impartial. Under such circumstances unanimity of action was hardly possible and could not reasonably have been expected. Such seems to have been the construction placed upon the agreement by the representatives of the parties thereto, for early in their sessions they concluded that a majority vote should govern their conclusions and determine the result of their labors. While as a general rule when submission is made to a given number of arbitrators and no express authority is given that a smaller number may decide, an award will be void unless made by all, still there are exceptions, and if it can fairly be interred from the manner of the submission and all the circumstances attending it, that all were not required to join in the finding, the result will be sustained. In addition to the circumstances referred to, it was set forth in the agreement that the commission should determine the procedure to be followed in the exercise of the powers conferred upon it both as to its own acts as well as to the proceedings of the parties themselves. The commissioners determined that a majority vote should govern their proceedings,—and all parties assented to this by their acquies-ence through the frequent sessions of the commission, held during a period of over two hundred days. It follows that I reach the conclusion that the award of two of the commissioners was valid, it appearing that all
1296 three were present at all meetings of the commission when business was transacted, participating in its proceedings and voting upon the motions and questions arising and decided, except the last one. Therefore had Commissioner Pena not tendered his resignation, and had he been present at the session when the award was made, and then have entered his dissent, still under the circumstances the award would have been binding on the parties, unless some other good cause could have been shown to render it void. In addition to this, I think that the submission was in the nature of a public contention, that the compromise and adjustment of the same through the medium of the commissioners was based on a public law, an act of the Congress of the Republic of Colombia, and that, therefore, under the well-established rule applicable to such controversies, the decision of the majority will conclude the minority, and their act will be the judgment of the whole number appointed. The dispute was, at least, brought to an issue by an act of the Congress of the Republic of Colombia, by which the franchise of the railway claimed by the Cauca Company was, in effect, forfeited; the

submission was evidently the result of the friendly suggestions emanating from the Secretary of State of the United States and conveyed to the government of the Republic of Colombia through the minister of the United States residing at Bogota; the third member of the commission was chosen not by the parties nor by the commissioners appointed by them, but by the representatives of the Governments of the Republic of Colombia and of the United States; the original concession to Cherry recognized the enterprise he was authorized to carry out to be of public utility, and conceded to him all the rights usual under such circumstances.

In such cases, unless there is a special provision to the contrary, unanimity in reaching a decision is not required of the commissioners; Coke's Litt., 181*a*; Gridley *vs.* Barker, 1 Bos. & P., 236; *Ex parte* Rogers, 7 Cow., 526. But as a matter of fact was not Pena still a member of the commission when the award was made? Did the mere writing of a letter of resignation, which, so far as the record shows, was never even forwarded to the party by whom he had been appointed, cause a vacancy to exist in the commission? He could have recalled the resignation, or the party to whom it was directed could have declined to accept it, in which event he could again have taken his place as a member of the commission, and in fact he could have done that at any time after the writing of the letter and before its acceptance by the power that appointed
1297 him. Clearly it was not the intention of the parties to the convention that the existence of the commission should be destroyed by a resignation of the character of that presented by Commissioner Pena. It would be an impeachment of the common honesty of the parties to the agreement, and a travesty on their evidently honorable intentions, to hold that they designed that it should thus be in the power of one man—actuated by, to say the least, not commendable motives—to render worthless the work resulting from the expenditure of thousands of dollars and months of careful research, in an effort to amicably adjust an unfortunate controversy, that was rapidly reaching the point of embarrassment because of its national and diplomatic character. The testimony forces me to the conclusion that Commissioner Pena's only motive in withdrawing from the commission was to prevent, if possible, a conclusion from being reached, or to render the award invalid, should one be made. This conduct—keeping in view all the circumstances surrounding him and the commission, of which he was still a member—was not only reprehensible in character, but was fraudulent in its tendencies. He represented the complainant, as did Cisneros, who advised him to pursue the course he did, and while I do not find that the complainant advised such action, still I hold that it would be unconscionable to allow the party, whose agents thus deported themselves, to effectuate by the decree of a court of equity the wrong intended to be accomplished by such improper conduct.

If the award, which had virtually been agreed upon before Commissioner Pena withdrew, was composed of items not included in the submission, then he should have entered his dissent, and have relied upon the proper tribunal, the assistance of which would have

been easily obtained, for the purpose of declaring the invalidity of the finding.

This brings us to the consideration of the scope of the submission, and to the charge that the award includes items not contemplated by the convention. The presumption is in favor of the award, and to avoid it the party complaining must clearly show that the authority granted has been exceeded. The ambiguities in the submission were caused by the fact that certain words in it (in the Spanish language) were each susceptible of more than one meaning. Both parties to the agreement offered expert testimony as to the true meaning of said words, argument of counsel was heard and the commission rendered a decision to the effect that the items included by it in the award were embraced in the terms of the submission. This
1298 question was one for the commission to decide, and, as the words in controversy were of a foreign tongue and had a technical meaning, the evidence of experts was properly taken. 1 Green Ev., secs., 277, 280.

Did the commission err in the construction it gave to the submission, and did it deal with matters which the parties never agreed should be the subject of the award? In construing the submission we must not only look at the agreement itself, but also at what was the obvious intention of the parties, as shown by the circumstances existing when the contract was entered into. The parties clearly intended to adjust all matters of controversy relating to the original concession to Cherry, as well as those growing out of the construction of the Cauca railway. One side was claiming a sum of money largely exceeding $600,000, while the other was conceding the sum of $200,000, and offering to arbitrate as to any additional amount; the original concession contemplated its assignment to a foreign company, or individual, and the assignment by Cherry was of record in the proper office in Bogota, the consideration of which assignment is one of the items of the award complained of; the company surrendered the railroad and property connected therewith, and was to have in exchange a *just indemnity* for the works and labors connected with the railway enterprise; the company had absolutely declined a settlement, the basis of which was to be an expert valuation of the actual cost of the physical construction of the railway; the president of the Republic of Colombia had offered to see that $400,000 was paid as a cash settlement of the controversy, and had assured the minister of the United States residing at Bogota that his desire was that the company should receive back every dollar it had expended.

By the fifth article of the convention, the commission was authorized to fix the indemnity, *and in addition* it was to appraise the structures, works and materials referred to. To indemnify is to save harmless, to reimburse, to repay any damage sustained. If the commission in ascertaining the indemnity had been limited to the actual local cost of the railway, why was it necessary to consider the books of the Cauca Company at New York, as also the documents that the government of Colombia, as well as the Cauca Company, might present in support of their respective claims, and such as the commission might demand. And would the president of the Republic of Colombia

have suggested, in settlement of the controversy, a sum in amount nearly double that of the actual expenditures for physical
1299 construction, about which there seems to have been but slight divergence of opinion, if that matter had been the only one in controversy? I think that the conclusion reached by the commission, as to the general scope of its powers, was correct, though on several items of one class of the allowances I am, as will appear hereafter, of the opinion that it was in error. The sum of $233,909.14 was allowed as the cost of physical construction, and as to this item there is no controversy. The amount of $108,181.42 was estimated as a proper allowance on account of the salaries of the officers of the company. This the complainant insists was improper because not included in the submission. For the reasons already stated, I find that this objection is without merit. It was well known to the complainant at the date of the convention that Cherry had assigned his interest in the concession to the Cauca Company, and that said company, organized for the purpose, was then or had been actively engaged in the construction of the railroad. Such companies act only through their officers, usually men of experience and ability, whose services command a compensation in keeping with the character and magnitude of the work. That it was the intention of the parties to the convention that a portion of the indemnity should be on account of such expenses is clear, I think, from the submission itself, as well as from such facts, existing at the time the agreement was signed, as are proper to be considered as explanatory thereof. What that allowance should be was left for the commission to determine. All of the members heard the evidence and the argument and two of them agreed to the allowance. Before this court can interfere and declare their finding invalid, it must be shown by the evidence that they acted corruptly or that they made a gross mistake, or the same must be apparent on the face of the award. I do not see the gross mistake, nor can I find that they or either of them were improperly influenced or governed by corrupt motives. This allowance may be large, is I think more than this court would have found from the evidence, but it is not so excessive or so outrageous as of itself to constitute conclusive evidence of fraud or corruption. The fact that the award is for a larger sum than the court would have allowed is not alone sufficient cause to justify a decree declaring the finding void. Such an allowance is one rather of discretion, based on all the circumstances proper to be considered, and not founded on mere calculation. The parties to the convention left this matter to the honest judgment of the tribunal chosen by them, and this court should not annul the award returned, even if
1300 it should think it could have made a fairer one. Arbitrators are expected to base their decision on the real merits and justice of the controversy submitted to them, and are not required to follow the strict rules of law. The utmost good faith in the discharge of their duties will be presumed and the result reached by them will not be disturbed without clear proof of either corruption, partiality or misconduct.

The amount of $135,000.00 was included in the award at the cost

of the concession. That Cherry necessarily made large expenditures in the negotiations preceding the execution of the original concession is apparent, and it is not strange that he provided in his assignment that he should not only be reimbursed the same, but also that he should be compensated for the valuable franchise he had secured.

The complainant knew of his assignment of all his rights and privileges to the Cauca Company, and certainly it was not justified in presuming that the same was made without compensation. This item was within the submission, and I find nothing in the record of this case by which I can impeach the judgment of the commissioners.

The sum of $29,385.88, for traveling expenses; $29,200 on account of extra compensation; $16,605.10 for the expenses of the New York office; $5,122.48 for incidental expenses were also allowed, after a careful examination of the books of the company, of the reports of the experts, of the evidence in general, and the arguments of counsel. The plaintiff furnishes the court with no evidence of fraud or corruption, nor of gross mistake, but virtually rests its contention *quoad* these matters on the insistence that they are not within the submission. As I have already in substance stated, I am of the opinion that this claim of complainant is without merit, and I find no evidence in this case that justifies me in declaring void the finding relating to said items.

Included in the award were the following sums, viz: $13,643.33, interest on the sum allowed as the cost of the concession; $48,688.18, interest to January 26, 1897, on the stipulated cost of physical construction, and $32,333.40 as interest on the actual amount paid in by the bondholders.

There was no direct authority given in the submission for the allowance of interest, nor can I find that it is to be inferred from the facts and circumstances attending the negotiations, on which I have already fully commented. In fact, I infer to the contrary, for it appears that the company was in the actual possession of the railway and the property connected therewith, enjoying such revenues as it
1301 yielded, and at the same time receiving from the complainant an allowance in the nature of subsidy. I do not find that it was the intention of the parties to the submission that the Cauca Company should be allowed both the use of the property and interest on the fund used in constructing it. The indemnity was to be a sum which should be the equivalent of what the company should prove it had expended in connection with the works constructed by it. I have found that this was not intended to limit the award to the actual expenditures for physical construction, but that it also included such incidental expenses as were necessary for the preparation and carrying on of the actual work in the field. But I am unable to concur in the conclusion that the submission justifies an allowance of interest on any of the expenditures, and therefore I hold that so far as such allowances are concerned the award is not binding. The items mentioned in the finding make in the ag-

gregate the sum of $652,048.93, which is subject to a credit of $200,000, theretofore paid by the Republic of Colombia to the Cauca Company, leaving the sum of $452,048.93 the amount of the actual award as returned by the commission. From this sum of $452,048.93 there must be deducted the items allowed by the commissioners under the mistaken conception of the scope of the submission, as follows: $13,643.33, as interest on the cost of the concession to the Cauca Company; $48,668.18, as interest on the cost of the physical construction of the railroad; and $32,333.40, as interest on the actual amount paid in by the bondholders, making together the sum of $94,644.91, and leaving as the actual and valid amount of the award $357,404.02 in the gold coin of the United States of America which the Republic of Colombia is to pay to the Cauca Company.

An award is not always invalid because in some respects it exceeds the submission, for if the part which is in excess can be clearly separated from the remainder which is within the submission, the latter should stand. In this case the record of the proceedings of the convention, which is evidence before the court for all proper purposes, a duly certified copy of the same having been made part of the complainant's bill, plainly sets forth each particular item of the award as returned by the commissioners, and therefore there is not the least difficulty in pointing out the matters not within the submission, all of which can be easily separated from the general finding.

In addition to the above award, the commissioners also directed that the Republic of Colombia should pay to Marcus Stine, the attorney representing the Cauca Company, the sum of ten thou-
1302 sand dollars, a special allowance, as part of the costs incident to the commission. This was not a proper allowance as costs, and it should not have been included in the finding made by the commissioners, and consequently will be disregarded.

I do not deem it essential to discuss the questions raised as to the relations existing between the Cauca Company and the Colombian Construction and Improvement Company, further than to say that it is plainly shown that they were such as usually exist between railroads and their construction companies, and also that the conclusion is inevitable from the proceedings before the commissioners that the complainant was fully advised of such relations before the convention was signed, and evidently intended that all legitimate expenditures of the said improvement company should be considered by the commission in ascertaining the indemnity it was to find for the Cauca Company.

The court in reviewing the conduct and the award of the commissioners must consider all the evidence laid before them by the parties to the convention, and it will regard as accurate the transcript of such proceedings, found in complainant's bill, and admitted by the defendants to be correct.

Other matters raised by the pleadings and discussed by counsel are not deemed material, at least, at this time, and will not now be considered.

I will pass a decree drawn in accordance with the views herein expressed.

(Signed) NATHAN GOFF,
United States Circuit Judge, Fourth Circuit.

January 9th, 1901.

* * * * * * *

1304 *Decree.*

In the Circuit Court of the United States for the District of West Virginia, at Clarksburg.

THE REPUBLIC OF COLOMBIA, Complainant,
vs.
THE CAUCA COMPANY and THE COLOMBIAN CONSTRUCTION and Improvement Company, Defendants,
and
THE CAUCA COMPANY and THE COLOMBIAN CONSTRUCTION and Improvement Company, Complainants in Cross-bill,
vs.
THE REPUBLIC OF COLOMBIA, Defendant to Cross-bill. } In Equity.

This cause came on to be heard at the October term, A. D. 1900, upon the pleadings and proofs, and was argued by counsel; and thereupon, upon consideration thereof, it is, this 11th day of March, A. D. 1901, ordered, adjudged and decreed as follows, to wit:

First. That the award made and executed October 22, 1897, by Lewis M. Haupt, chairman, and Christian F. Schramme, commissioners constituting a majority of the commission appointed under the convention of January 4, 1897, between The Republic of Colombia and the defendant, The Cauca Company, for the sum of $652,048.93, less the sum of $200,000, theretofore paid by the complainant, leaving the amount of said award $452,048.94, payable in the city of New York, in gold coin of the United States of America, on January 26th, 1898, be and the same is hereby approved, ratified and confirmed as and for a valid and binding award for and up to the sum of three hundred and fifty-seven thousand, four hundred and fifty-four dollars and two cents ($357,404.02) in gold coin of the United States of America, to be paid by the Republic of Colombia to the Cauca Company, in the city of New York, on the 26th day of January, A. D. 1898, with interest thereon from said date, and that as to any amount in excess of the sum above mentioned and payable as aforesaid, the following separate items of said original award, namely: $13,643.33, interest on the cost of the concession to the Cauca Company; $48,668.18, interest on the cost of the physical construction of the railroad; $32,333.40, interest on the actual amount paid in by the bondholders, making a total of $94,644.91, be, and the same is, hereby disallowed, and the temporary in-
1305 junction heretofore granted is as to said items of excess, aggregating $94,644.91, hereby made perpetual; and that the special allowance of $10,000 to Marcus Stine, Esq., counsel for the

Cauca Company before said commission, as part of the costs incident to said commission, be, and is, hereby also disallowed, and the temporary injunction heretofore granted be, and is, hereby made perpetual as to such special allowance.

Second. That the complainant and the defendants each pay their own costs, without allowance of costs in favor of either as against the other.

(Signed) NATHAN GOFF,
U. S. Circuit Judge.

March 11, 1901.

Ent. C. O. B., fo. 370.

Prayer of Appeal.

In the Circuit Court of the United States for the Fourth Circuit, District of West Virginia, at Clarksburg.

THE REPUBLIC OF COLOMBIA, Complainant by Original Bill, *vs.* THE CAUCA COMPANY and THE COLOMBIAN CONSTRUCTION and IMPROVEMENT COMPANY, Defendants, and THE CAUCA COMPANY and THE COLOMBIAN CONSTRUCTION and IMPROVEMENT COMPANY, Complainants by Cross-bill, *vs.* THE REPUBLIC OF COLOMBIA, Defendant.	In Equity.

Comes now The Republic of Colombia, complainant in the original bill and defendant in the cross-bill, in the above-entitled cause, by Calderon Carlisle and William G. Johnson, its solicitors, and prays the court to allow to the said The Republic of Colombia an appeal to the United States circuit court of appeals for the fourth circuit, from all of the final decree herein passed on the eleventh day of March, A. D. 1901, except so much of said decree as disallows the sum of ninety-four thousand, six hundred and forty-four dollars and ninety-one cents ($94,644.91), part of the award herein, and as to said sum makes the temporary injunction heretofore granted perpetual; and except also so much of said decree as disal-
1306 lows the additional sum of ten thousand dollars ($10,000), special allowance, to Marcus Stine, counsel for the Cauca Company before the commission, and as to said sum of ten thousand dollars ($10,000) makes the temporary injunction heretofore granted perpetual.

And the said The Republic of Colombia files with this its petition for allowance of appeal its assignment of errors according to the requirements of the rules of court in such case made and provided, and prays the court to allow its said appeal and herewith tenders to the court its bond for costs on said appeal and prays the court to approve the same and to sign a citation to the said The Cauca Com-

pany and the said Colombian Construction and Improvement Company to be and appear at said United States circuit court of appeals for the fourth circuit at the time and in manner and form as required by law.

And the said petitioner The Republic of Colombia, will ever pray, &c.

(Signed) THE REPUBLIC OF COLOMBIA,
By CALDERSON CARLISLE &
W. G. JOHNSON, *Solicitors.*

Filed 18 day of March, 1901.
L. B. DELLICKER,
Clerk C. C. U. S., D. W. Va.

Assignment of Errors.

In the Circuit Court of the United States for the District of West Virginia, at Clarksburg.

THE REPUBLIC OF COLOMBIA, Complainant by Original Bill,
vs.
THE CAUCA COMPANY and THE COLOMBIAN CONSTRUCTION and Improvement Company, Defendant,
and
THE CAUCA COMPANY and THE COLOMBIAN CONSTRUCTION and Improvement Company, Complainants by Cross-bill,
vs.
THE REPUBLIC OF COLOMBIA, Defendant.
} In Equity.

The Republic of Colombia, appellant from the decree entered herein on the eleventh day of March, A. D. 1901, assigns as error by the court the following:

1. The court erred in its construction of the true intent 1307 and meaning of the agreement for submission to arbitration dated January 4th, 1897, in the proceedings mentioned.

2. The court erred in holding that the agreement of January 4, 1897, was ambiguous in its language, or contained any technical terms to be explained by the testimony of experts.

3. The court erred in considering the conflicting statements before the commission, not offered in evidence in this case, by persons not called as witnesses in this cause to the exclusion of the admittedly correct translation of the agreement of January 4th, 1897, properly proved and uncontradicted by the evidence in this cause.

4. The court erred in not holding that the true intent and meaning of the agreement of January 4th, 1897, required the arbitrators to confine their award to the sum which the Cauca Company proved it had expended on the works executed by it in the construction of the said railway and for rolling stock, tools, etc., imported for use on said railway.

5. The court erred in holding that the sum of one hundred and eight thousand, one hundred and eighty-one dollars and forty-two cents ($108,181.42) part of said award, being for salaries alleged to be due to officers of the defendant corporation, The Colombian Construction and Improvement Company, by the said The Colombian Construction and Improvement Company, was within the terms of the agreement of submission of January 4, 1897, and properly allowable by the arbitrators as a sum to be paid by the complainant, The Republic of Colombia, to the Cauca Company.

6. The court erred in holding that the sum of one hundred and thirty-five thousand dollars ($135,000) part of said award, being a sum alleged to be due to James L. Cherry by the Colombian Construction and Improvement Company in consideration of the assignment to it of an alleged contract between said Cherry and the Cauca Company, and in consideration of the return by said Cherry to said The Colombian Construction and Improvement Company of the sum of eight hundred thousand dollars ($800,000) of full-paid stock of said The Colombian Construction and Improvement Company, was within the terms of the agreement of submission to arbitration of January 4th, 1897, and properly allowed by the arbitrators as a sum to be paid by the complainant The Republic of Colombia to the Cauca Company.

1308 7. The court erred in holding that the sum of one hundred and thirty-five thousand dollars ($135,000), part of the said award, being a sum stipulated to be paid by the Colombian Construction and Improvement Company to James L. Cherry by the certain contract between said The Colombian Construction and Improvement Company and said James L. Cherry, set forth in Exhibit No. 8 to the original bill, was within the terms of the submission to arbitrators of January 4th, 1897, and was properly allowed by them as a sum to be paid by the Republic of Colombia to the Cauca Company.

8. The court erred in holding that the sum of twenty-nine thousand, three hundred and eighty-six dollars and thirty cents ($29,386.30), part of said award, being a sum alleged to be the travelling expenses due from the Colombian Construction and Improvement Company to Cherry and Schramme as officers of the Colombian Construction and Improvement Company, was within the terms of the submission to arbitrators of January 4th, 1907, and was properly allowed by them as a sum to be paid by the Republic of Colombia to the Cauca Company.

9. The court erred in holding that the sum of twenty-nine thousand, two hundred dollars ($29,200), part of said award, being part of a sum of fifty thousand dollars ($50,000), which it is alleged was, by a resolution of the board of directors of the Colombian Construction and Improvement Company passed on the 15th of February, 1897, agreed to be paid to said Cherry and Schramme by said The Colombian Construction and Improvement Company for services of said Cherry and Schramme in securing the agreement of arbitration of January 4th, 1897, was within the terms of the submission to arbitration of January 4th, 1897, and was properly

allowed as a sum to be paid by the Republic of Colombia to the Cauca Company.

10. The court erred in holding that the sum of sixteen thousand, six hundred and five dollars and ten cents ($16,505.10), part of said award, being the sum alleged to be the sum of the office expenses of the Colombian Construction and Improvement Company, was within the terms of the submission to arbitration of January 4th, 1897, and was properly allowed as a sum to be paid by the Republic of Colombia to the Cauca Company.

11. The court erred in holding that the sum of five thousand, one hundred and twenty-two dollars and forty-eight cents ($5,122.48), part of said award, being a sum alleged to be for sundries
1309 expended by the Colombian Construction and Improvement Company, was within the terms of the agreement of January 4th, 1897, and was properly allowed as a sum to be paid by the Republic of Colombia to the Cauca Company.

12. The court erred in holding that any expenditures by or obligations of the Colombian Construction and Improvement Company were within the terms of the agreement of January 4th, 1897, and in holding that the arbitrators had power and jurisdiction to allow any such as proper sums to be paid by the Republic of Colombia to the Cauca Company.

13. The court erred in holding that any of the sum of three hundred and fifty-seven thousand, four hundred and four dollars and two cents ($357,404.02), part of the said award, except the sum of thirty-three thousand, nine hundred and nine dollars and fourteen cents ($33,909.14) fixed by stipulation of the parties before the arbitrators, was within the terms of the submission to arbitration of January 4th, 1897, and was properly allowed by said arbitrators as a sum to be paid by the Republic of Colombia to the Cauca Company.

14. The court erred in holding that the said award was valid and binding up to the sum of three hundred and fifty-seven thousand, four hundred and four dollars and two cents ($357,404.02).

15. The court erred in holding that the resignation of Manual H. Pena as a member of the commission, and his ceasing to act as a member of the commission, did not require the appointment of a new arbitrator under article VI of the agreement of January 4th, 1897, before any valid award could be rendered under the said agreement.

16. The court erred in holding that Pena was still a member of the commission when the award was made.

17. The court erred in not holding the said award to be invalid because of the misconduct of Haupt and Schramme, as arbitrators, in the course of said arbitration and in the making of said award.

18. The court erred in holding that the award in these proceedings mentioned had any validity.

18. The court erred in not decreeing the said award in these proceedings mentioned to be null and void and in not decreeing the same to be delivered up to be cancelled.

1310 20. The court erred in not making the preliminary injunction as to said entire award perpetual.

21. The — erred in treating and considering any of the matters and things contained in the minutes of the arbitrators, being Exhibits Nos. 19, 20 and 21 with the original bill, as evidence in this cause for any other purpose than as showing what took place before said arbitrators.

22. The court erred in treating and considering as evidence upon the issue in this cause statements before the arbitrators not offered in evidence in this cause and made by persons not produced as witnesses in this cause.

23. The court erred in treating and considering as evidence upon the issues in this cause statements before the arbitrators not offered in evidence in this cause and made by persons not produced as witnesses in this cause, and which statements had been rejected as evidence before the arbitrators by the said arbitrators themselves.

24. The court erred in decreeing interest to be due upon any part of the said award.

25. The court erred in holding that the Republic of Colombia was liable to the Cauca Company for any sum in excess of *of* the sum of thirty-three thousand, nine hundred and nine dollars and fourteen cents ($33,909.14) which the Republic of Colombia tendered itself ready to pay to the Cauca Company in the original bill herein.

26. The court erred in not awarding costs to the complainant.

And the Republic of Colombia prays the United States circuit court of appeals for the fourth circuit to reverse the final decree rendered in this cause on the eleventh day of March, A. D., 1901.

(Signed) CALDERON CARLISLE &
W. G. JOHNSON,
Solicitors for the Republic of Colombia.

Filed 18th day of March, 1901.

L. B. DELLICKER,
C. C. — U. S., D. W. Va.

* * * * * * *

1312 *Order Allowing Appeal.*

In the Circuit Court of the United States for the District of West Virginia, at Clarksburg.

THE REPUBLIC OF COLUMBIA, Complainant by Original Bill,
vs.
THE CAUCA COMPANY and THE COLOMBIAN CONSTRUCTION and Improvement Company, Defendants,
and
THE CAUCA COMPANY and THE COLOMBIAN CONSTRUCTION and Improvement Company, Complainants in Cross-bill,
vs.
THE REPUBLIC OF COLOMBIA, Defendant.
} In Equity.

The Republic of Colombia having prayed an appeal to the United States circuit court of appeals for the fourth circuit, from the final decree passed herein on the eleventh day of March, A. D. 1901, and filed with its petition for allowance of said appeal an assignment of errors, as required by the rules of said court, it is by the court, this 18th day of March, A. D. 1901, ordered that the said appeal be and the same hereby is allowed.

(Signed) NATHAN GOFF,
U. S. Circuit Judge.

Ent. C. O. B., fo. 372.

1313 *Citation.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Cauca Company and the Colombian Construction and Improvement Company, Greeting:

You are hereby cited and admonished to be and appear at a United States circuit court of appeals for the fourth circuit, to be holden at Richmond on the first Tuesday in May, 1901, pursuant to an appeal from the circuit court of the United States for the district of West Virginia, wherein The Republic of Colombia was plaintiff in error and you are defendant in error, to show cause, if any there be, why the decree rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Nathan Goff, judge of the circuit court of the United States for the fourth judicial circuit, this 18th day of March, in the year of our Lord, one thousand, nine hundred and one.

NATHAN GOFF,
U. S. Circuit Judge.

Service of the within citation for the Cauca Company and the Colombian Construction and Improvement Company acknowledged, this 19th day of March, A. D. 1901.

COWEN, CROSS & BOND,
Solicitors for Appellees.

1314 *Clerk's Certificate.*

UNITED STATES OF AMERICA, *District of West Virginia*, } *ss:*

I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, do certify that the foregoing is a true transcript of the record and proceedings in the equity cause of The Republic of Colombia *vs.* The Cauca Co. and The Colombian Construction and Improvement Co. and The Cauca Co. and The Colombian Construction and Improvement Co., cross-bill *vs.* The Republic of Colombia, and now of record and on file in my office.

In testimony whereof I hereto set my hand and the seal of said court at Clarksburg in said district this 22nd day of March, 1901, and in the 125 year of the Independence of the United States of America.

Seal of the Court.

L. B. DELLICKER,
Clerk U. S. C. C., D. W. Va.

1317 At the February term of the said circuit court of appeals, to wit: February 4, 1902, the court here announced and filed its *per curiam* opinion, which is as follows, to wit:

Opinion.

Filed February 4, 1902.

United States Circuit Court of Appeals, Fourth Circuit.

THE REPUBLIC OF COLOMBIA, Appellant,
versus
THE CAUCA COMPANY and THE COLOMBIAN CONSTRUCTION and IMPROVEMENT COMPANY, Appellee. } No. 407.

THE CAUCA COMPANY, Appellant,
versus
THE REPUBLIC OF COLOMBIA, Appellee. } No. 423.

Cross-appeals from the circuit court of the United States for the district of West Virginia, at Clarksburg.

(Argued Nov. 25, 1901; decided Feb. 4, 1902.)

Before Simonton, circuit judge, and Jackson and Purnell, district judges.

William G. Johnson for the Republic of Colombia, and Hugh L. Bond, Jr., and John W. Beaumont (Cowen, Cross & Bond and Edward H. Murphy on briefs) for the Cauca Company *et al.*

Per curiam:

We have carefully considered the opinion of the circuit
1318 court, the subject-matter of appeal in these two cases. We can add nothing to the clear statement of the facts of the case made by the learned judge who delivered the opinion of the court (106 Fed. Rep., 337), and we can add nothing to the reasons which led him to his conclusion; in which conclusion we entirely concur.

The decree of the circuit court is affirmed.

Afterwards, at the same term, to wit: on February 8, 1902, the court here made and entered the following decree, to wit:

Decree.

Filed Feb. 8, 1902.

United States Circuit Court of Appeals, Fourth Circuit.

THE REPUBLIC OF COLOMBIA, Appellant,
vs.
THE CAUCA COMPANY and COLOMBIAN CONSTRUCTION and Improvement Company, Appellees. } No. 407.

Appeal from the circuit court of the United States for the district of West Virginia.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of West Virginia, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court, that the decree of the said circuit court, in this cause, be, and the same is hereby, affirmed, with costs.

CHARLES H. SIMONTON,
Circuit Judge.

Feb. 8, 1902.

1319 Afterwards, at the same term, to wit: February 10, 1902, the said appellant by its solicitor filed its petition for an appeal to the Supreme Court of the United States, together with an assignment of errors, which are as follows, to wit:

Prayer of Appeal to the Supreme Court.

Filed February 10, 1902.

In the United States Circuit Court of Appeals for the Fourth Circuit.

THE REPUBLIC OF COLOMBIA, Complainant by Original Bill,
vs.
THE CAUCA COMPANY and THE COLOMBIAN CONSTRUCTION and Improvement Company, Defendants,
and
THE CAUCA COMPANY and THE COLOMBIAN CONSTRUCTION and Improvement Company, Complainants by Cross-bill,
vs.
THE REPUBLIC OF COLOMBIA, Defendant.
} No. 407.

Comes now The Republic of Colombia, complainant in the original bill and defendant in the cross-bill, in the above-entitled cause, by William G. Johnson, its solicitor, and prays the court to allow to the said The Republic of Colombia an appeal to the Supreme Court of the United States from the final decree passed herein on the eighth day of February, A. D. 1902, except so much of said decree as affirms that part of the decree of the court below disallowing the sum of ninety-four thousand six hundred and forty-four dollars and ninety-one cents ($94,644.91) part of the award herein, and disallowing the additional sum of ten thousand dollars ($10,000) special allowance to Marcus Stine, counsel for the Cauca Company before the commission and as to said sums granting a perpetual injunction.

And the said The Republic of Colombia files with this its petition for allowance of appeal its assignment of errors according to the requirements of the rules of court in such case made and provided, and prays the court to allow its said appeal.

And the said petitioner The Republic of Colombia will ever pray, &c.

THE REPUBLIC OF COLOMBIA,
By WILLIAM G. JOHNSON, *Its Solicitor.*

1320 *Assignment of Errors.*

Filed Feb. 10, 1902.

In the United States Circuit Court of Appeals for the Fourth Circuit, February Term, 1902.

THE REPUBLIC OF COLOMBIA, Complainant by Original Bill,
vs.
THE CAUCA COMPANY and THE COLOMBIAN CONSTRUCTION and Improvement Company, Defendants,
and
THE CAUCA COMPANY and THE COLOMBIAN CONSTRUCTION and Improvement Company, Complainants by Cross-bill,
vs.
THE REPUBLIC OF COLOMBIA, Defendant.
} No. 407.

The Republic of Colombia, appellant from the decree entered herein on the eighth day of February, A. D. 1902, assigns as error by the court the following:

1. The court erred in its construction of the true intent and meaning of the agreement for submission to arbitration dated January 4th, 1897, in the proceedings mentioned.

2. The court erred in holding that the agreement of January 4th, 1897, was ambiguous in its language, or contained any technical terms to be explained by the testimony of experts.

3. The court erred in considering the conflicting statements before the commission, not offered in evidence in this case, by persons not called as witnesses in this cause, to the exclusion of the admittedly correct translation of the agreement of January 4th, 1897, properly proved and uncontradicted by the evidence in this cause.

4. The court erred in not holding that the true intent and meaning of the agreement of January 4th, 1897, required the arbitrators to confine their award to the sum which the Cauca Company proved it had expended on the works executed by it in the construction of the said railway and for rolling stock, tools, etc., imported for use on said railway.

5. The court erred in holding that the sum of one hundred and eight thousand one hundred and eighty-one dollars and forty-two cents ($108,181.42) part of said award, being for salaries alleged to be due to officers of the defendant corporation, The Colombian Construction and Improvement Company, by the said Colombian Construction and Improvement Company, was within the terms of the agreement of submission of January 4, 1897, and properly allowable by the arbitrators as a sum to be paid by the complainant, The Republic of Colombia, to the Cauca Company.

6. The court erred in holding that the sum of one hundred and thirty-five thousand dollars ($135,000) part of said award, being a

sum alleged to be due to James L. Cherry by the Colombian Construction and Improvement Company in consideration of the assignment to it of an alleged contract between said Cherry and the Cauca Company, and in consideration of the return by said Cherry to said The Colombian Construction and Improvement Company of the sum of eight hundred thousand dollars ($800,000) of full-paid stock of said The Colombian Construction and Improvement Company, was within the terms of the agreement of submission to arbitration of January 4, 1897, and properly allowed by the arbitrators as a sum to be paid by the complainant The Republic of Colombia to the Cauca Company.

7. The court erred in holding that the sum of one hundred and thirty-five thousand dollars ($135,000), part of the said award being a sum stipulated to be paid by the Colombian Construction and Improvement Company to James L. Cherry by the certain contract between said The Colombian Construction and Improvement Company and said James L. Cherry, set forth in Exhibit No. 8 to the original bill, was within the terms of the submission to arbitrators of January 4, 1897, and was properly allowed by them as a sum to be paid by the Republic of Colombia to the Cauca Company.

8. The court erred in holding that the sum of twenty-nine thousand three hundred and eighty-six dollars and thirty cents ($29,386.30), part of said award, being a sum alleged to be the travelling expenses due from the Colombian Construction and Improvement Company to Cherry and Schramme as officers of the Colombian Construction and Improvement Company, was within the terms of the submission to arbitrators of January 4, 1897, and was properly allowed by them as a sum to be paid by the Republic of Colombia to the Cauca Company.

9. The court erred in holding that the sum of twenty-nine thousand two hundred dollars ($29,200), part of said award, being part of a sum of fifty thousand dollars ($50,000) which it is alleged was, by a resolution of the board of directors of the Colombian Construction and Improvement Company, passed on the 15th of February, 1897, agreed to be paid to said Cherry and Schramme by said The Colombian Construction and Improvement Company for services of said Cherry and Schramme in securing the agreement of arbitration of January 4, 1897, was within the terms of the submission to arbitration of January 4, 1897, and was properly allowed as a sum to be paid by the Republic of Colombia to the Cauca Company.

10. The court erred in holding that the sum of sixteen thousand six hundred and five dollars and ten cents ($16,605.10), part of said award, being the sum alleged to be the sum of the office expenses of the Colombian Construction and Improvement Company was within the terms of the submission to arbitration of January 4, 1897, and was properly allowed as a sum to be paid by the Republic of Colombia to the Cauca Company.

11. The court erred in holding that the sum of five thousand one hundred and twenty-two dollars and forty-eight cents ($5,122.48), part of said award, being a sum alleged to be for sundries expended

by the Colombian Construction and Improvement Company, was within the terms of the agreement of January 4, 1897, and was properly allowed as a sum to be paid by the Republic of Columbia to the Cauca Company.

12. The court erred in holding that any expenditures by or obligations of the Colombian Construction and Improvement Company were within the terms of the agreement of January 4, 1897, and in holding that the arbitrators had power and jurisdiction to allow any such as proper sums to be paid by the Republic of Colombia to the Cauca Company.

13. The court erred in holding that any of the sum of three hundred and fifty-seven thousand four hundred and four dollars and two cents ($357,404,02), part of the said award, except the sum of thirty-three thousand nine hundred and nine dollars and fourteen cents ($33,909.14) fixed by stipulation of the parties before the arbitrators, was within the terms of the submission to arbitration of January 4, 1897, and was properly allowed by said arbitrators as a sum to be paid by the Republic of Colombia to the Cauca Company.

14. The court erred in holding that the said award was valid and binding up to the sum of three hundred and fifty-seven thousand four hundred and four dollars and two cents ($357,404.02).

15. The court erred in holding that the resignation of Manuel H. Pena, as a member of the commission, and his ceasing to act as a member of the commission, did not require the appointment of a new arbitrator under article VI of the agreement of January 4, 1897, before any valid award could be rendered under the said agreement.

16. The court erred in holding that Pena was still a member of the commission when the award was made.

17. The court erred in not holding the said award to be invalid because of the misconduct of Haupt and Schramme, as arbitrators, in the course of said arbitration and in the making of said award.

18. The court erred in holding that the award in these proceedings mentioned had any validity.

19. The court erred in not decreeing the said award in these proceedings mentioned to be null and void and in not decreeing the same to be delivered up to be cancelled.

20. The court erred in not making the preliminary injunction as to said entire award perpetual.

21. The court erred in treating and considering any of the matters and things contained in the minutes of the arbitrators, being Exhibits Nos. 19, 20 and 21 with the original bill, as evidence in this cause for any other purpose than as showing what took place before said arbitrators.

22. The court erred in treating and considering as evidence upon the issues in this cause statements before the arbitrators not offered in evidence in this cause and made by persons not produced as witnesses in this cause.

23. The court erred in treating and considering as evidence upon the issues in this cause statements of persons before the arbitrators not

offered in evidence in this cause and made by persons not produced as witnesses in this cause and which statements had been rejected as evidence before the arbitrators by the said arbitrators themselves.

24. The court erred in decreeing interest to be due upon any part of the said award.

25. The court erred in holding that the Republic of Colombia was liable to the Cauca Company for any sum in excess of the sum of thirty-three thousand nine hundred and nine dollars and fourteen cents ($33,909.14) which the Republic of Colombia tendered itself ready to pay to the Cauca Company in the original bill herein.

26. The court erred in not awarding costs to the complainant.

27. The court erred in affirming the decree of the court below.

And the Republic of Colombia prays the Supreme Court of the United States to reverse the final decree rendered in this cause on the 8th day of February, 1902.

WILLIAM G. JOHNSON,
Solicitor for the Republic of Colombia.

1324 Thereupon the same day to wit: February 10, 1902, the court here made and entered the following order, to wit:

Order Granting Appeal.

Filed Feb. 10, 1902.

In the United States Circuit Court of Appeals for the Fourth Circuit.

THE REPUBLIC OF COLOMBIA, Complainant by Original Bill,
vs.
THE CAUCA COMPANY and THE COLOMBIAN CONSTRUCTION and Improvement Company, Defendants,

and

THE CAUCA COMPANY and THE COLOMBIAN CONSTRUCTION and Improvement Company, Complainants in Cross-Bill,
vs.
THE REPUBLIC OF COLOMBIA, Defendant.

No. 407.

The Republic of Colombia having prayed an appeal to the Supreme Court of the United States from the final decree passed herein on the eighth day of February, A. D. 1902, and filed with its petition for allowance of said appeal an assignment of errors, as required by the rules of said court, it is by the court this tenth day of February, A. D. 1902, ordered that the said appeal be and the same hereby is allowed, and the bond for costs is hereby fixed at the sum of five hundred dollars.

CHARLES H. SIMONTON,
Circuit Judge.

Appeal Bond.

Filed Feb. 11, 1902.

Know all men by these presents: That we, the Republic of Colombia, and the American Bonding and Trust Company of Baltimore city, are held and firmly bound unto the Cauca Company and the Colombian Construction and Improvement Company, in the full and just sum of five hundred dollars, to be paid to the said Cauca Company and the Colombian Construction and Improvement Company, their successors or assigns, to which payment, well and truly to be made, we bind ourselves, and our successors, jointly and severally, by these presents.

Sealed with our seals and dated this 10th day of February in the year of our Lord one thousand nine hundred and two.

Whereas, lately at the February term 1902 of the United States circuit court of appeals for the fourth circuit, in a suit depending in said court between The Republic of Colombia, appellant, and The Cauca Company and The Colombian Construction and Improvement Company, appellees, a decree was rendered against the said The Republic of Colombia, and the said The Republic of Colombia has obtained the allowance of an appeal by the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Cauca Company and the Colombian Construction and Improvement Company, citing and admonishing the said Cauca Company and the said The Colombian Construction and Improvement Company to be and appear in the Supreme Court of the United States at the city of Washington, in the District of Columbia, thirty days from and after the date of said citation.

Now the condition of the above obligation is such that if the said The Republic of Colombia shall prosecute said appeal to effect and answer all costs if the said The Republic of Colombia shall fail to make good its plea, then the above obligation to be void; else to remain in full force and virtue.

THE REPUBLIC OF COLOMBIA,
By her envoy extraordinary and minister plenipotentiary,
CARLOS MARTINEZ SILVA. [SEAL.]

[Seal of American Bonding and Trust Co. of Baltimore City.]

THE AMERICAN BONDING AND TRUST COMPANY OF BALTIMORE CITY.
JACKSON GUY,
Vice-Pres't for State of Virginia.

Attest: SAM'L THOMAS PULLIAM,
Ass't Sec'y for State of Va.

The foregoing bond is endorsed: "App'd. Charles H. Simonton, circuit judge. 11 Feb. 1902."

UNITED STATES OF AMERICA, ss:

The President of the United States to the Cauca Company
1325 and the Colombian Construction and Improvement Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, D. C. on the 9th day of March, 1902, pursuant to an appeal from the United States circuit court of appeals for the fourth circuit, wherein you are the appellees, and The Republic of Colombia is the appellant, to show cause, if any there be, why a decree rendered against the said appellant on the 8th day of February, 1902, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Charles H. Simonton, circuit judge of the United States, this 11th day of February, in the year of our Lord one thousand nine hundred and two.

CHARLES H. SIMONTON,
U. S. Circuit Judge.

Service submitted this 15th day of February 1902.

COWEN, CROSS & BOND,
Solicitors for Defendants.

And thereupon it is ordered by the court here that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the Supreme Court of the United States, and the same is transmitted accordingly.

Test: HENRY T. MELONEY, *Clerk.*

1326 *Clerk's Certificate.*

UNITED STATES OF AMERICA, ss:

I, Henry T. Meloney, clerk of the United States circuit court of appeals for the fourth circuit, do certify that the aforegoing is a true transcript of the record and proceedings in the therein-entitled cause as the same remains upon the records and files of the said circuit court of appeals.

In testimony whereof I hereto set my hand and affix the seal of the said United States circuit court of appeals for the fourth circuit, at Richmond, on this 17th day of February, A. D. 1902.

[SEAL.] HENRY T. MELONEY,
Clerk U. S. Circuit of Appeals, Fourth Circuit.